# Supreme Court of the United States

OCTOBER TERM, 1945

No. 342

STEVE ANDERSON, EARL TROMBLEY, LILLIAN SOCIA, ALBERT WATKINS, ARTHUR SIBBE, NELSON LUCHTMAN, RITA SCHULTE, individually, for and in behalf of themselves and others similarly situated; and LOCAL No. 1083, UNITED POTTERY WORKERS OF AMERICA, Affiliated with the Congress of Industrial Organizations, Mt. Clemens, Michigan,

*Petitioners,*

vs.

MT. CLEMENS POTTERY COMPANY,

*Respondent.*

## TRANSCRIPT OF RECORD

**On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit**

**(VOL. I—Index and Pages 1 to 528, Inclusive)**


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No. .....

United States of America

IN THE

# United States Circuit Court of Appeals

FOR THE SIXTH CIRCUIT

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MT. CLEMENS POTTERY COMPANY,

*Appellant,*

*vs.*

STEVE ANDERSON, EARL TROMBLEY, LILLIAN SOCIA, ALBERT WATKINS, ARTHUR SIBBE, NELSON LUCHTMAN, RITA SCHULTE, individually, for and in behalf of themselves and others similarly situated; and LOCAL 1083, UNITED POTTERY WORKERS OF AMERICA, Affiliated with the Congress of Industrial Organizations, Mt. Clemens, Michigan,

*Appellees*

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Appeal From the District Court of the United States for the Eastern District of Michigan, Southern Division.
Civil Action No. 2582

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# TRANSCRIPT OF RECORD

(VOL. I—Index and Pages 1 to 528, Inclusive)

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# TRANSCRIPT OF RECORD

## CALENDAR ENTRIES

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Apr. 16—Complaint filed.
Apr. 16—Summons issued.
Apr. 24—Summons with return filed.
May 2—Defendant S. S. Kresge Co., Special Appearance Motion to Quash and Dismiss, Objections to Interrogatories filed. Hearing May 12, 1941.
May 2—Objections of Mt. Clemens Pottery Co. to Interrogatories filed. Hearing May 12, 1941.
May 3—Affidavit of Service filed.
May 8—Application for continuance of hearing on Objections and Motion filed.
May 12—Motions of The Mt. Clemens Pottery Co. to limit scope of action and to strike certain allegations and to require furnishing of Bill of Particulars and more definite statement of claim filed. Hearing May 26, 1941.
May 12—Motion to Quash and Dismiss and Objections to Interrogatories continued to May 26, 1941.
May 13—Affidavit of Service filed.
May 17—Affidavit of Carl B. Tuttle and Notice filed.
May 26—Motion to Quash and Dismiss; and Objections to Interrogatories taken under advisement with leave to file briefs.
June 11—Notice of Settlement of Order with respect to Motion to Quash and Objections to Inter-

rogatories of S. S. Kresge Co. filed. Hearing June 16, 1941.

June 13—Order denying Motions to Quash and Dismiss filed and entered—Book 39, page 549.

June 16—Notice of Settlement re Order to Quash, etc., dismissed.

June 19—Affidavit of Service filed.

July 8—Designation of Albert Weier, et al., filed.

July 8—Designation of Harry May, et al., filed.

July 8—Designation of Walter Selk, et al., filed.

July 8—Designation of Arthur Baxter, et al., filed.

July 8—Designation of Ruth Gottschalk, et al., filed.

July 8—Designation of Arthur Sibbe, et al., filed.

Aug. 28—Answer of Defendant S. S. Kresge filed.

Sept. 29—Designation of H. Wilson, et al., filed.

Oct. 23—Bill of Particulars filed.

Nov. 1—Motion to strike or for further particulars filed. Hearing Nov. 10, 1941.

Nov. 10—Order on Motion of Defendant to strike or for further particulars filed and entered.

Nov. 24—Order Extending Time to File Amendment to the Bill of Particulars to Dec. 15, 1941, filed and entered.

Nov. 26—Amendment to Plaintiff's Bill of Particulars filed.

Dec. 2—Motion for Judgment and for Appointment of Special Master filed. Hearing Dec. 8, 1941.

Dec. 6—Motion of Mt. Clemens Pottery Co. to strike or for further particulars filed. Hearing Dec. 15, 1941.

Dec. 8—Hearing on Motion for Judgment and for Appointment of Special Master continued to Dec. 15, 1941.

Dec. 12—Answer of Mt. Clemens Pottery Co. to Motion for Judgment and for Appointment of Special Master filed.

Dec. 15—Order Denying Motion for Judgment filed and entered.

1942—

Jan. 3—Answer of Mt. Clemens Pottery Co. and Motions to Dismiss and Strike filed.

Jan. 5—Order Denying Plaintiffs' Request for Judgment Without Prejudice, etc., filed and entered.

Jan. 6—Supplemental Order Denying Plaintiffs' Request for Judgment Without Prejudice, etc., filed and entered.

Jan. 7—Affidavit of Service filed.

Jan. 10—Exceptions of Mt. Clemens Pottery Co. to Supplemental Order of Jan. 6, 1942; filed.

Jan. 16—Motion of Plaintiffs for Summary Judgment filed. Hearing Jan. 26, 1942.

Jan. 24—Answer of Mt. Clemens Pottery Co. to Motion for Summary Judgment filed.

Jan. 27—Order Denying Motion for Summary Judgment filed and entered.

Jan. 28—Order Denying Motor for Summary Judgment and Referring Cause to Donald L. Quaife as Special Master filed and entered.

Jan. 29—Supplemental Order Denying Motion for Summary Judgment, etc., filed and entered.

Jan. 30—Designation of Irene Neoker, et al., filed.

Feb. 10—Designation of Bill Behnke, et al., filed.

June 5—Petition for Compensation filed.

June 5—Order for Compensation filed and entered.

1943—

Mar. 23—Report of Special Master filed.

Mar. 24—Notice of Filing Report of Master and Proof of Mailing filed.

Mar. 25—Motion of S. S. Kresge Co. for Order Adopting Report of Special Master and for Entry of Judgment filed. Hearing Apr. 5, 1943.

Apr. 1—Petition of Donald L. Quaife for Compensation filed. Hearing Apr. 5, 1943.

Apr. 2—Objections to Master's Report filed.

Apr. 3—Motion of Mt. Clemens Pottery Co. for entry of Judgment on Report of Special Master filed. Hearing Apr. 12, 1943.

Apr. 6—Petition of Donald L. Quaife for Compensation and Motion of S. S. Kresge Co. for Order Adopting Report of Special Master continued to April 12, 1943.

Apr. 12—Motion of S. S. Kresge Co. for Order Adopting Report of Special Master and Motion of Mt. Clemens Pottery Co. for entry of Judgment on Report of Special Master taken under advisement.

Apr. 12—Order allowing Donald Quaife, Special Master, $1000.00 as Temporary Allowance on $2000.00 fee entered.

Apr. 14—Order allowing Compensation on Account to Special Master filed and entered.

Apr. 24—Reply Memorandum of Plaintiffs relative to Answer of Mt. Clemens Pottery Co. to Plaintiffs' Objections filed.

June 8—Further hearing before the Court. Arguments of Counsel. Case taken under advisement.

June 15—Order Dismissing Cause as to S. S. Kresge Co. With Prejudice filed and entered.

June 15—Order Allowing Compensation to Special Master filed and entered.

July 2—Opinion of the Court filed and entered.

July 7—Proposed Findings of Fact and Conclusions of Law filed. Motion for Supplemental and Additional Findings filed.

July 8—Petition of Edward Lamb for Allowance of Counsel Fees filed.

Aug. 25—Motion of Plaintiffs to Settle Findings of Fact, Conclusions of Law and for Judgment filed.

Sept. 2—Notice of Hearing on Motion Sept. 13, 1943, filed.

Sept. 3—Motion of Defendant Requesting Adoption of Findings and Conclusions filed. Hearing Sept. 13, 1943.

Sept. 3—Notice of Settlement of Findings of Fact and Conclusions of Law filed. Hearing Sept. 13, 1943.

Sept. 13—Findings of Fact and Conclusions of Law filed and entered.

Sept. 22—Preliminary Statement of Exceptions by Defendant to Findings of Fact, etc., filed.

Dec. 11—Computations made in accordance with Court's Findings of Sept. 13 filed.

Dec. 11—Praecipe for hearing on Motion for Adoption of Findings, Dec. 20, 1943, 2 p. m., filed.

1944—

Jan. 4—Defendant's Motion for Adoption of Findings taken under advisement with leave to file briefs.

Mar. 3—Opinion of the Court filed and entered.

May 24—Motion to Amend Findings of Fact and Conclusions of Law and for an Entry of Judgment filed.

May 24—Notice of Hearing on Motion for June 5, 1944, filed.

June 12—Objections to Allowance of Attorney Fees filed.

June 13—Judgment for Plaintiffs in $2,415.74, Attorney Fees $2,000.00 and Costs to be Taxed filed and entered.

July 14—Motion for Extension of Stay filed.

July 14—Order Extending Stay of Proceedings to and including September 2, 1944, filed and entered.

Aug. 29—Objections to Petition for Order Dispensing with Reproduction of Physical Exhibits in Printed Record filed.

Aug. 29—Petition for Fixing of Bond and Providing for Stay filed.

Aug. 29—Order Fixing Amount of Supersedeas and Appeal Bond in $10,000, and Providing for Stay on Giving of Bond filed and entered.

Sept. 7—Petition for Order Dispensing with Reproduction of Physical Exhibits filed.

Sept. 7—Order Dispensing with Reproduction of Physical Exhibits filed and entered.

Sept. 8—Notice of Appeal filed.

Sept. 8—Supersedeas and Appeal Bond in $10,000 filed. Fidelity and Deposit Company of Mt. Clemens, surety.

Sept. 8—Concise Statement of Points of Defendant filed.

Sept. 8—Designation of Record on Appeal by Defendant filed.

Sept. 8—30 Volumes of testimony filed (2 sets: one filed and other lodged).

Sept. 8—Letter of Defendant's Attorneys re Exhibits filed.

Sept. 8—Receipt for Lodged Testimony filed.

Sept. 8—Receipt for Exhibits filed.

Sept. 9—Proof of Mailing of Notice of Appeal filed.

Sept. 12—Affidavit of Service filed.

Oct. 9—Petition for Order Extending Time filed.

Oct. 9—Order Extending Time for Filing Record on Appeal to and Including Dec. 7, 1944 filed and entered.

Oct. 30—Stipulation as to Transcript and Exhibits filed.

## COMPLAINT

(Filed April 16, 1941)

Now come the plaintiffs herein for and in behalf of themselves and others similarly situated, and state that each is an employee of the Mt. Clemens Pottery Company, defendant herein; that the Mt. Clemens Pottery Company is a corporation organized and existing under and by virtue of the laws of the State of Michigan with its principal place of business at Mt. Clemens, Michigan, in the Eastern District of Michigan, Southern Division. That Charles B. Doll is the general superintendent and managing agent of said Mt. Clemens Pottery Company. That the defendant S. S. Kresge Company is a corporation organized and existing under the laws of the State of Michigan and claims a substantial ownership of the stock of the defendant Mt. Clemens Pottery Company and as such owner acts as an employer and supervises the policies and affairs of said defendant Mt. Clemens Pottery Company.

1. Plaintiffs further state that each is an employee of the Mt. Clemens Pottery Company and that they bring this action by virtue of Section 16(b) of the Fair Labor Standards Act of 1938, hereinafter referred to as the Act. Said action is brought in behalf of the plaintiffs herein for and in behalf of all others similarly situated, employees of the Mt. Clemens Pottery Company, defendants herein. The United Pottery Workers of America is an unincorporated trade association affiliated with the Congress of Industrial Organizations and that Local 1083 thereof has a majority of its members among the employees of the Mt. Clemens Pottery Company. That said trade union, plaintiff herein, has been designated a representative of various of its members to bring this action under the Fair Labor Standards Act of 1938, together with these individual plaintiffs.

Plaintiffs further allege that this action arises under an Act of Congress entitled "Fair Labor Standards Act of 1938," 29 U.S.C.A. 201, and that jurisdiction is conferred upon this Court by Section 41(8), 28 U.S.C.A. 24, giving the District Court original jurisdiction "of all suits and proceedings arising under any law regulating commerce" and by Section 16(b) of the Fair Labor Standards Act aforesaid.

2. Plaintiffs further state that since on or about October 24, 1938, the effective date of the aforesaid Fair Labor Standards Act of 1938, the defendant company has been violating the provisions of said Act, including Section 7(a) of said Act.

3. Plaintiffs further allege that the aforesaid Mt. Clemens Pottery Company employs approximately 1250 employees. Plaintiffs state that said employees are engaged in interstate commerce and are covered by the provision of said Act. Plaintiffs further state that almost all of the raw materials used by said corporation are purchased in North Carolina, Georgia and other states outside the state of Michigan, that lead silicate, frit and other ingredients used by defendant in the manufacture of its products are purchased in Missouri and elsewhere and that approximately 85% of the finished products of said corporation are sold in interstate commerce outside the state of Michigan.

4. Plaintiffs further state that after October 24, 1938, said defendant company worked its employees in violation of said Act for a period of 45 hours a week without paying said employees overtime as provided for in the aforesaid statute. That there is now due and owing said employees for the period from October 24, 1938, to October 24, 1939, pay for the hours worked overtime in excess of said statutory limitations as well as liquidated damages in an amount equal thereto, all as more fully set forth in Section 16(b) of said Act. Plaintiffs further state that

after October 24, 1939, the maximum number of working hours of employees, such as the plaintiffs herein, was reduced by said Act to 42 hours and that the defendant company in violation of said Act has been working its employees 45 hours a week since October 24, 1939, and that there is due and owing said employees pay for hours worked overtime in excess of said statutory limitations as well as liquidated damages in an equal amount, all as set forth in Section 16(b) of said Act.

5. Plaintiffs further state that after October 24, 1940, the maximum number of working hours of employees, such as the plaintiffs herein, was reduced by said Act to 40 hours and that the defendant company in violation of said Act has been working its employees approximately 45 hours a week since October 24, 1940, and that there is due and owing said employees pay for hours worked overtime in excess of said statutory limitations as well as liquidated damages in an equal amount, all as set forth in Section 16(b) of said Act.

6. Plaintiffs further state that employees represented in this action are employees who work either on a piece work, bonus or upon an hourly rate basis. Plaintiffs further state that since October 24, 1939, certain of defendant's employees in whose behalf this action is brought by plaintiffs herein did not, either on a piece work or upon an hourly rate computation, earn the minimum wage of 30¢ an hour as provided for in Section 16(b) of said Act. That female employees in the decorating department of said defendant company were required to and did do decal work at home under orders of the defendant herein and without compensation therefor. That said defendant required employees, including one Marie Pearl, to take such decal work home with her for services in defendant's behalf. That said company paid said Marie Pearl the sum of $21.00 for two weeks' work and that said company stated on the company records, submitted to the United States Government, that said Marie Pearl worked a period of 80 hours during said period of two weeks, whereas in

truth and in fact during said two weeks period said Marie Pearl worked for defendant at home and in excess of said 80 hours.

Plaintiffs allege that other employees of the defendant in whose behalf this action is brought undertake work for said defendant company for a period of 18 weeks and for the minimum pay of 30¢ an hour required by said Act and that in truth and in fact said company deducts the sum of 10% of said new employee's pay during a period of 18 weeks from the date of hiring of said employees. That said deduction is described by said defendant as a "beginner's rate" of pay, whereas in truth and in fact said company upon the completion of said 18 weeks employment, changes said employees to another job in order to continue the deduction of 10% from the pay checks of the employees as aforesaid. That there is now due and owing said employees amounts for time worked in which they were not paid the minimum wage as aforesaid.

7. Plaintiffs further state that the defendant compels its employees to punch a time clock and in such procedure deliberately falsifies the records of the time worked by its employees. That the said employees work 14 minutes in advance of the time shown on the time clocks in the morning of each working day. That the time clocks maintained by the defendant company indicate that the employees stop working for a lunch period at 11:45 A. M., whereas in truth and in fact each employee of the defendant herein is required to continue working until 11:55 A. M. That thereafter the time clock indicates that each employee of the defendant company herein resumes work at 12:45 P. M., whereas in truth and in fact each employee of the defendant company herein resumes work at 12:31 P. M. That the time clocks maintained by the defendant company indicate that the employees stop work in the afternoon at 4:15 P. M., whereas in truth and in fact each employee of defendant works until 4:30 P. M. That ever since October 24, 1940, said defendant company has required each of the employees in whose behalf this action

is brought by the plaintiffs herein to work an extra 40 minutes per day or approximately 3¼ hours per week in addition to the 40 hours shown on the time clocks erroneously maintained as aforesaid.

8. That on or about September 15, 1940, and on other occasions the foreman of the defendant company, Ernest Harms, acting for and in behalf of the defendants herein, falsified the records of 40 female employees of the defendant company by punching out the time cards of said female employees 61 minutes early in order to indicate that said employees ceased working at 4:39 P. M., whereas in truth and fact said employees were required to work until 5:40 P. M. That said company further falsifies said records by requiring said plaintiffs to sign a voucher in blank prior to the issuance of checks in payment for said employees' services; that said vouchers are thereafter filled in by the company to indicate alleged hours worked and wages paid after the checks for service are given said employees. That said employees have not been compensated for the work performed in excess of the hours shown on the time cards, vouchers and payroll slips and that wages for said work performed, including liquidated damages as provided for in said Act, are due and owing said employees.

That the employees in whose behalf this action is brought by the plaintiffs herein are engaged in the clay shops, on the bisque and glost belts, in the dipping department, decorating room, packing sheds and the slip off departments of the defendant herein and includes kiln operators, liners, decal and other workers as well as employees who load, unload, pack, handle, ship and transport and process the products of the defendant herein for interstate commerce.

9. Plaintiffs further allege that they are not informed as to the exact amount of hours overtime rendered by each of said employees or the minimum wages still due and owing for hours worked in violation of the aforesaid Fair Labor Standards Act of 1938. Plaintiffs further

allege that such information is not available to these plaintiffs, but that the records thereof are, or should be, under the provisions of said Act, in the exclusive possession of the defendants herein. That interrogatories are attached hereto which plaintiffs respectfully ask the Court to compel defendant to answer. That plaintiffs are informed and so allege the fact to be that there is in excess of $100,000.00 due and owing to the employees of the defendant aforesaid for overtime rendered by said employees in the employ of the defendant herein in violation of the Fair Labor Standards Act of 1938 and for wages not paid in accordance with the minimum standards of wages set up in the Fair Labor Standards Act of 1938, all in violation of the express terms of said Act.

Plaintiffs further state that by reason of the aforesaid acts of the defendant, plaintiffs for themselves and for others similarly situated and as employees of the Mt. Clemens Pottery Company, have suffered damages in the amount of $100,000.00.

Wherefore, plaintiffs pray for themselves and for other employees similarly situated in whose behalf this action is brought as follows:

1. That the defendant answer the interrogatories hereto annexed.

2. That the Court enter judgment in the amount of $100,000.00 and costs, including reasonable attorney fees for plaintiff's counsel, and that they may have such other and further relief as is just and proper in the premises.

Edward Lamb,
Lowell Goerlich,
Counsel for Plaintiffs,

1014 Edison Building,
Toledo, Ohio.

## INTERROGATORIES ANNEXED

The following interrogatories are annexed to the foregoing complaint to be answered by the defendant as prayed for in the complaint:

First Interrogatory:

Give the names, addresses and social security numbers of all employees in the employment of the defendants herein between the dates of October 24, 1938, and the date of the filing of the complaint herein and who are similarly situated to the plaintiffs herein.

Answer:

Second Interrogatory:

Give the hours worked by the above employees and the wages paid to them by the defendant between the dates of October 24, 1938, and the filing of the petition herein.

Answer:

Third Interrogatory:

Give all correspondence, office records and other memoranda passing between defendants or their agents concerning setting up or maintaining records required by the Fair Labor Standards Act of 1938.

Answer:

Fourth Interrogatory:

Give all notices posted, letters addressed to employees and other memoranda passing between the defendant and its agents concerning enactment of the Fair Labor Standards Act of 1938 and practices thereunder and in relation to the wages to be paid defendant's employees after Oc-

tober 24, 1938, together with a list of the wages paid each of the said defendant's employees for the period one year prior to October 24, 1938, and for the period from October 24, 1938, to the date of the filing of this petition.

Answer:

## OBJECTIONS TO INTERROGATORIES

(Filed May 2, 1941)

Now comes The Mt. Clemens Pottery Company, one of the defendants in the above entitled cause, by Beaumont, Smith & Harris, its attorneys, appearing specially only and solely for the purpose of filing objections to the interrogatories heretofore delivered to said defendant, and shows unto the Court as follows:

1. On or about April 22, 1941, there was served upon said defendant a copy of the complaint filed in the above entitled cause and of annexed interrogatories.

2. The said defendant is desirous of preparing and filing within the time allowed by the rules of this Court certain motions attacking the complaint heretofore served and filed herein; and the disposition of such motions may, if the same be granted, render unnecessary any further consideration of the interrogatories hereinabove referred to.

3. The said defendant further objects to said interrogatories numbered First through Fourth and to each and all of them, and moves that they be quashed and dismissed on the following grounds:

(a) Said interrogatories are not directed to the discovery of relevant or ultimate facts;

(b) Said interrogatories are not directed to the discovery of facts material to the support of the cause;

(c) Said interrogatories seek only to compel a blanket disclosure of evidence or facts from which plaintiffs hope to be able to discover some cause of action;

(d) Said interrogatories are merely fishing expeditions designed to pry into the defendant's records;

(e) Said interrogatories are too broad and inquisitorial in their nature and scope;

(f) Said interrogatories seek disclosure of confidential and privileged information;

(g) There is no showing, nor does it in any way appear, that the information requested by plaintiffs is in any way relevant or material to the allegations of the complaint;

(h) There is no showing that plaintiffs, or any of them, have any authority to sue for any other employees of this defendant; and if they have not, they are not entitled to the information requested as to such other employees; and as to the named plaintiffs, or any others whom plaintiffs may be authorized to represent, there is no occasion to require disclosure of the data requested in interrogatories First and Second, such data as to all such parties being within the knowledge of such parties;

(i) All the interrogatories are too broad and indefinite, and too vague and uncertain; and are improper as requiring defendants to compile elaborate data;

(j) Interrogatories relating to the contents of communications are improper;

(k) All of said interrogatories are improper as requiring production of books, documents and other tangible

things, the production of which should be and could more conveniently be sought under other rules;

(l) Said so-called interrogatories are not really interrogatories but are requests for the inspection of certain documents. If discovery thereof is sought by plaintiffs it should be sought by the method provided by other rules and subject to conditions imposed by such other rules;

(m) The said interrogatories are not made in good faith, but are designed to vex and annoy the defendant by seeking a compilation of all the data contained in payroll records of this defendant over a period of several years, relating to many matters in no way pertinent to the pending suit;

(n) The plaintiffs are not entitled to any of the information sought to be elicited from this defendant by said interrogatories;

(o) The said interrogatories do not indicate to which of the two defendants they are addressed.

Wherefore, your defendant moves that said interrogatories be stricken and that consideration of defendant's objections to said interrogatories be deferred until the disposition of motions by this defendant attacking the said complaint.

Beaumont, Smith & Harris,
F. E. Cooper,
Attorneys for Defendant,
The Mt. Clemens Pottery Company
2900 Union Guardian Building,
Detroit, Michigan.

May 2, 1941.

## MOTIONS OF DEFENDANT THE MT. CLEMENS POTTERY COMPANY TO LIMIT SCOPE OF ACTION AND TO STRIKE CERTAIN ALLEGATIONS AND TO REQUIRE FURNISHING OF BILL OF PARTICULARS AND MORE DEFINITE STATEMENT OF CLAIM

(Filed May 12, 1941)

Now comes The Mt. Clemens Pottery Company, one of the defendants in the above entitled cause, by Beaumont, Smith & Harris, its attorneys, and moves the Court to enter an appropriate order or orders:

(a) limiting the scope of the action by dismissing the above entitled complaint insofar as it purports to allege, or to be the basis of, a class or representative action, or an action brought by an agent for or on behalf of divers unnamed individuals as the real parties in interest, and

(b) striking from said complaint the various immaterial, impertinent, and improperly pleaded allegations hereinafter more specifically referred to, and

(c) requiring the furnishing by plaintiffs of a more definite statement and a bill of particulars of certain matters (hereinafter more specifically referred to) which are not averred in said complaint with sufficient definiteness or particularity to enable this defendant properly to prepare its responsive pleadings or to prepare for trial, and

(d) granting such other relief as to the Court may seem proper.

I. More particularly, this defendant moves the Court that the complaint be dismissed insofar as it purports to present a class or representative action, and that the scope of the action be limited to the claims of the named individual plaintiffs, and of such other individuals as may properly intervene, for the following reasons, among others:

(a) The above entitled cause is not the type of case wherein Section 16(b) of the Federal Fair Labor Standards Act of 1938 or the rules of this Court permit the joining of separate and individual and independent claims of several parties, it appearing on the face of the complaint that there are not common questions of law and fact involved nor is common relief sought, nor is the character of the right alleged several.

(b) There is no proper showing as to what employees or what class of employees are represented, nor is there any proper showing that there exists any class or group of employees who are similarly situated, nor is there any showing that the named plaintiffs can provide proper or adequate representation of any such class.

(c) There is no showing as to the authority by which the named individual plaintiffs or Local 1083 of the United Pottery Workers of America represent any other employees of this defendant, nor is there any showing as to what other employees the plaintiffs purport to represent.

(d) Said Local 1083 is not a proper party to maintain in its own name an action for the recovery of independent and several claims of various members thereof.

(e) The above entitled action may not be maintained except by and for such individual employees as are named

in the complaint or such other employees as may properly intervene herein on their own behalf, setting up their specific claims.

(f) The complaint does not contain allegations sufficient to justify the bringing of any such class or representative action as is sought to be maintained.

II. More particularly, this defendant further moves:

1. That there be stricken from said complaint each and every allegation therein that the named individual plaintiffs sue for themselves and other employees "similarly situated," and each and every allegation making claims on behalf of or statements referable to employees "similarly situated," or to employees "such as" plaintiffs, or to employees "represented in this action," or "on whose behalf" the action is brought, or to any employees other than the named individual plaintiffs, and particularly such allegations found in: the second line of the opening paragraph of said complaint; lines 5 and 6 of paragraph 1; line 11 of paragraph 4; line 3 of paragraph 5; lines 1, 5 and 22 of paragraph 6; line 19 of paragraph 7; line 20 of paragraph 8; line 20 of paragraph 9. All of such allegations are immaterial and impertinent to any claim properly in issue in this action. In the alternative, this defendant moves that if such matters be not stricken, then plaintiffs be required by bill of particulars to set forth the names and addresses of the individual employees whom it is claimed are "similarly situated" with the named individual plaintiffs and whom it is claimed the plaintiffs represent and have a right to represent in the bringing of this action, and on whose behalf the action is said to be brought.

2. That there be stricken all of lines 7 through 15 of paragraph 1, and particularly the allegations therein that

Local 1083 of the United Pottery Workers of America has a majority of its members among the employees of this defendant and that said Union has been designated a representative of various of its members to bring this action. Such allegations are immaterial and impertinent to any claims properly in issue herein. In the alternative, this defendant moves that if such allegations be not stricken, then plaintiffs be required to advise this defendant by bill of particulars what employees of this defendant are members of said Union and which of its members among said employees have designated said Union to bring this action, and how such designation was made, and when and where it was made, and by what right the said Union can be named as a party herein.

3. That there be stricken the allegation in lines 8, 9 and 10 of paragraph 2 that certain employees are engaged in interstate commerce and covered by the provisions of the Fair Labor Standards Act of 1938. Such allegations are mere conclusions of law and are immaterial to the claims of the named individual plaintiffs, and are not properly pleaded. In the alternative, and if such allegation be not stricken, this defendant moves that plaintiffs be required by bill of particulars to state more definitely the names of the employees referred to, and (by allegation of facts, as required by the rules and practice of this Court) in what ways each of such employees are engaged in interstate commerce, or in what other way, if any, any of said employees are engaged in activities covered by the provisions of said Act, and, if so, what activities each of them are engaged in, and what weeks each of said employees did engage in said activities rendering them subject to the Act.

4. That there be stricken all of lines 10 through 17 of paragraph 2 and particularly the allegations therein that this defendant purchases raw materials in other states and sells its finished product in interstate commerce, all

the allegations in said lines contained being immaterial and impertinent to any of the issues raised in said complaint.

5. That there be stricken all of paragraph numbered 4 of said complaint for the reason that the allegations therein do not in any way refer to the named individual plaintiffs or to any claimants properly before the Court nor does said paragraph properly allege that any of the plaintiffs, or any individuals whose claims are sought to be presented herein, worked in excess of the maximum hours set up by said Fair Labor Standards Act without receiving compensation therefor at once and one-half their regular rate of pay. In the alternative, this defendant moves that, if said paragraph be not stricken, then plaintiffs be required to furnish a definite statement and particulars as to the names of this defendant's employees whom it is alleged were employed for a period of 45 hours a week without payment of overtime, and the weeks in which it is alleged that each of such employees did so work during all of the periods referred to in said paragraph 4 of the complaint, and the amount claimed to be due each of them by reason thereof.

6. That there be stricken all of paragraph numbered 5 of said complaint for the reason that the allegations therein do not in any way refer to the named individual plaintiffs or to any claimants properly before the Court nor does said paragraph properly allege that any of the plaintiffs, or any individuals whose claims are sought to be presented herein, worked in excess of the maximum hours set up by said Fair Labor Standards Act without receiving compensation therefor at once and one-half their regular rate of pay. In the alternative, this defendant moves that, if said paragraph be not stricken, then plaintiffs be required to furnish a definite statement and particulars as to the names of this defendant's employees whom it is alleged were employed for a period of 45 hours a week without payment of overtime, and the weeks

in which it is alleged that each of such employees did so work during all of the periods referred to in said paragraph 5 of the complaint, and the amount claimed to be due each of them by reason thereof.

7. That there be stricken from said complaint all of paragraph 6 thereof for the reason that all of the allegations therein made are immaterial and impertinent to any issues involved herein, there being no allegation that any of the individual plaintiffs (whose are the only claims properly before the Court) failed to earn the minimum wage of 30¢ an hour, or were required to or did do home work or suffered any wage deductions, and it appearing that one Marie Pearl, who is specifically referred to in said paragraph, is not a party to this action. In the alternative, this defendant moves that if said paragraph be not stricken, then plaintiffs be required to furnish a more definite and particular statement as to the names of the employees whom are claimed to be represented in this action, and whether each of said employees works on a piece work or on an hourly rate basis, and which of said employees it is claimed did not earn the minimum wage of 30¢ per hour, and the weeks in which it is claimed their earnings fell below such minimum, and which female employees in the decorating department were required to and did do "decal" work at home under orders of this defendant and without compensation therefor, and in what weeks such work was done by each of such employees, and how many hours of such home work it is claimed were worked by each of such employees in each such week, and what representative of this defendant it is claimed so required such employees to do "decal" work at home; and during what two-week period it is claimed one Marie Pearl received the sum of $21 for 80 hours work, and how many hours it is claimed the said Marie Pearl worked in each week of said two-week period; and the names of the employees of this defendant from whose salaries it is claimed the sum of 10% was deducted, and the weeks in which such deductions were

made as to each such employee, and in what manner and by whom such deductions are claimed to have been made, and whether it is claimed such deductions reduced the salaries paid to any such employees below the minimum required by law, and whether it is claimed the deductions were illegal, and if so on what grounds, and what employees are claimed to have been changed from one job to another at a continuation of the "beginner's" rate, and the nature and times of these instances, with full particulars thereof, and how much it is claimed is now due each of such employees and what number of hours and in what weeks it is claimed each such employee worked for less than the minimum wages as provided by law, and during what weeks it is claimed these offenses occurred.

9. That there be stricken from paragraph 7 all allegations referable to other employees than the individual plaintiffs herein, and particularly such allegations occurring in lines 9, 11, 13, 16, and 18 of paragraph 7, or, in the alternative, that plaintiffs be required to furnish particulars as to the names of the employees to whom it is claimed the allegations of this paragraph refer, and the weeks in which it is claimed the alleged acts occurred.

10. That there be stricken lines 1 through 8 of paragraph 8 of said complaint, such allegations not being shown to refer to any individuals whose claims are before the Court, and that there be stricken the allegations in lines 20 through 27 of said paragraph 8, such allegations being immaterial to any claims herein made. In the alternative, this defendant moves that if said allegations be not stricken, then plaintiffs be required to furnish full particulars as to how it is claimed Ernest Harms falsified on or about September 15, 1940, the time records of certain employees of this defendant, and the other occasions when it is claimed he made other falsifications, and the nature of each such claimed falsification, and the date thereof, and the names of the employees whose records

it is claimed were falsified on each such occasion; and the names of the employees to whom it is claimed there are due any sums of money for work performed in excess of the hours shown on the time cards, vouchers and payroll slips, and what sum is claimed to be due each of said employees, and during what weeks it is claimed such employees performed uncompensated work in excess of the hours shown on the time cards, vouchers and payroll slips, and the amount claimed to be due each such employee for each such week, and which of the employees are engaged in the respective departments referred to, and the names of the employees whom it is claimed were required to sign vouchers in blank, and the weeks in which it is claimed each such employees was so required to sign.

III. More particularly, this defendant further moves that in addition the plaintiffs be required to furnish a more definite statement and a bill of particulars with reference to the following allegations:

1. As to the allegations in paragraph 2, during what weeks since the effective date of the Fair Labor Standards Act it is claimed this defendant violated the provisions thereof, and what provisions of said Act it is claimed were violated by this defendant in each such week, and as to what employees it is claimed the Act was violated in each such week, and what sums are claimed to be due each such employee for each such violation.

2. As to all the allegations in paragraph 7, and particularly the names of the employees whom it is claimed were compelled to punch a time clock, and how in such procedure it is claimed this defendant deliberately falsified the records of the time worked by the employees; and the names of the employees whose records it is claimed were falsified, and as to what weeks it is claimed each of said employees worked in excess of the hours shown by such

time clock records, and the hours claimed to have been worked by each of such employees in each of such weeks, and what sums are claimed to be due each of such employees on account thereof, and what work it is claimed each of such employees did outside the hours indicated by said time clock records as hours worked.

3. As to the allegations in paragraph 8 of said complaint, which employees were required to sign blank vouchers, and in what weeks each of them were required so to sign, and in what weeks it is claimed each of said employees worked in excess of the hours shown on the time cards, vouchers and payroll slips, and how many hours it is claimed each of said employees worked during each of such weeks in excess of the number shown on said records, and what sums are claimed to be due each of them on account thereof.

4. As to the allegations in paragraph 9, the names of the employees to whom it is claimed this defendant is indebted for overtime, and the names of the employees to whom it is claimed this defendant is indebted for subminimum wages, and what sum is claimed for each of such employees for each of said reasons, and during what weeks it is claimed such indebtedness was incurred as to each such employee.

This motion is based on the files and records of this cause and upon the affidavit hereunto annexed.

Beaumont, Smith & Harris,
Albert E. Meder,
Frank E. Cooper,
Attorneys for Defendant The Mt. Clemens Pottery Co.,
2900 Union Guardian Bldg.,
Detroit, Michigan.

May 10, 1941.
County of Macomb—ss.

CHARLES E. DOLL, being first duly sworn, deposes and says that he is a resident of the City of Mount Clemens, Macomb County, Michigan, and is the Vice President and General Manager of The Mount Clemens Pottery Company, one of the defendants in the above entitled cause.

Deponent further says that he has read the complaint served in the above entitled cause and knows the contents thereof, and makes this affidavit in support of the several motions hereto annexed.

Deponent further says that a labor dispute is actively in progress at the plant of The Mount Clemens Pottery Company, and that a strike has been called, and that the labor dispute involves among other matters the claims of rival labor organizations as to their representation of the approximately one thousand employees of The Mount Clemens Pottery Company; and that deponent is informed and believes that a large number of said employees not belonging to Local 1083, United Pottery Workers of America, have no desire that the above entitled matter be prosecuted on their behalf, and on the contrary would be opposed to any claim that the above named plaintiffs do or ought to be allowed to represent them. Deponent further says that he does not know and is unable to ascertain what employees of The Mount Clemens Pottery Company, if any, in addition to the named individual plaintiffs, have authorized any of the plaintiffs to bring this suit on their behalf; and deponent further says that he has no means of ascertaining what, if any, employees of the Company may be claimed to be similarly situated as compared with the named individual plaintiffs in respect to the claims made herein; and that he has utterly no means of learning by whom or for whom this suit is being pressed, or what amount is being claimed for any employee, or in what

weeks it is claimed there occurred the violations of the Fair Labor Standards Act which are attempted to be alleged in the complaint. Deponent further says that he cannot ascertain the identity of the individuals to whom it may be sought to apply the allegations of the complaint, nor can he ascertain what employees or classes of employees may be claimed to be involved under the various and unrelated violations of the Fair Labor Standards Act charged in said complaint. Deponent further says that the employees of the Mount Clemens Pottery Company would not be similarly situated so far as concerns their status with reference to the claims made in said complaint, but that on the contrary there would be many different and divergent claims as to individual employees (if any of them had any just or lawful claims in the premises, which deponent denies), and that as deponent is advised and believes, there are no questions of fact and no claims of relief which would be common as to any class of employees.

Deponent further says that to the best of his knowledge the said Company has at all times fully complied with the requirements of the said law, and deponent further says that to the best of his knowledge and belief no employees of the Company were required to work forty-five hours per week at any time since 1938, and no sub-minimum wages were paid employees of the Company, and no employees were required to do any work at home, and no records have been falsified, as charged in the said complaint. Deponent further says that he believes the charges in said bill of complaint to be without foundation.

Deponent further says that he is advised by counsel and verily believes that (except to the extent that the issues would be simplified if the annexed motion to strike is granted) it would be impossible properly to prepare responsive pleadings or to prepare for trial unless plaintiffs are required to furnish particulars as to the em-

ployees claimed to be involved and as to the weeks in which it is claimed the Act was violated as to each such employee, and the nature and extent of the violation which it is claimed occurred in each such week as to each such employee, and as to the other matters as to which particulars are prayed in the annexed motion.

Chas. E. Doll.

Subscribed and sworn to before me this ninth day of May, A. D. 1941.

Eleanor Schulte,
Notary Public, Macomb County, Mich.
My commission expires Oct. 25, 1942.

## ORDER

(Filed June 13, 1941)

At a session of said Court held at the Federal Building in the City of Detroit, County of Wayne, State of Michigan, on the 13th day of June, A. D. 1941.

Present: Honorable Frank A. Picard, District Judge.

This matter comes before the Court on three different motions of defendant, The Mt. Clemens Pottery Company:

First, dismissing the complaint insofar as it purports to be a class action;

Second, to strike certain allegations from the complaint; and

Third, more definite information on certain statements alleged in the complaint and bill of particulars.

This latter includes objections to certain interrogatories annexed to the complaint.

Both parties have filed citations but defendant in particular has prepared an extensive brief which the Court has examined carefully taking into consideration the purposes of the Fair Labor Standards Act and a practical common sense construction thereof.

This Court believes that in actions of this kind if a narrow interpretation is given to class suits, then very few such actions can be brought under the Wage and Hour Law. Undoubtedly all those who claim "over-time" can be

put in one classification; "Sub-minimum wages" in another; "home work" in another and "record falsification" is still another. But they are all employees, governed by the same law with the same rights. If claimants as employees could not through one person or agent—bring an action for the others as such—then an unlimited number of suits would have to be started for let us say "over-time" alone, or at least those claiming "over-time" and those claiming "sub-minimum wages," etc. Thus some employees would find themselves plaintiffs in four or five suits, which probably would be combined and tried as one when the parties got into court. Defendant surely cannot claim that this is the intent of either the statute or the rules. What harm then can follow from treating all the claimed ills of these plaintiffs in one suit? Surely it is the object and intent of the Fair Labor Standards Act and Federal Rules to consolidate all actions that may be combined into one action, and this is one case where, by the same witnesses, the same records, the same employer, the same questions can all be ironed out in one hearing, provided, of course, there is in the total of claimants a fair representation of all the employees of defendant, The Mt. Clemens Pottery Company.

This Court is also aware that the evidence upon which plaintiffs must depend is practically all in the hands of defendants The Mt. Clemens Pottery Company or possibly the Kresge Company and that plaintiffs must examine the books and records wherever they are in order to find out minutely and exactly what they may need. But in all fairness it should not be necessary for defendant to be ready in court with each and every record of all its 1,200 odd employees, and that is one reason why preliminary work of this nature should be done before trial.

We believe that if the interpretation by defendant of Saxton v. W. S. Askew Co., 35 Fed. Supp. 519 is correct,

such a holding would be too narrow and we are inclined to follow the law as laid down in Fishman v. Marcourse, 32 Fed. Supp. 460 as to what are or are not class suits. But on page 463 of that opinion it is stated:

> "This right to examine books and records of the opposing party should be limited, however, to an examination of the material records pertaining solely to the parties bringing this suit."

In other words, plaintiffs are not to be permitted to embark upon a fishing expedition under the guise of a class suit and evidently the law is so written as to permit one or more persons to institute a class suit, yet limiting the right to examine records to those actually interested in the action before the Court. Anyone desiring to intervene could but the decision of the Court would probably be stare decisis of the rights of anyone who had not, and we have been shown no decision yet that would permit one party to bring an action for an entirely different group who were not interested in protecting their own rights or who might prefer to have other representation—legal or otherwise. We admit that this presents a situation that is rather paradoxical, but until there has been a further clarification by higher courts, we are forced to hold that Congress conceived that one employee would not voluntarily see another employee establish a right to more compensation to which he was also entitled and not demand the same or that the employer, being conscious of possible further litigation, would not immediately rectify the wrong that had been righted under a class suit. And finally, there is always the action of the government itself criminal in nature that the employer would have to consider.

Plaintiffs are therefore ordered to prepare a bill of particulars showing those whom they represent and whom they claim fall within each specific division, such as "overtime," "sub-minimum wages," etc., so that defendant may

be prepared to meet the same. For that purpose and to secure that information, plaintiffs may examine the books and records of defendant, The Mt. Clemens Pottery Company (and records of the Kresge Company, if any on violations concerning those persons) and also such correspondence as there may be between defendants tending to prove control by defendant Kresge over the policies and affairs of The Mt. Clemens Pottery Company.

As for joinder of CIO as a party plaintiff, it is hereby ordered that Local 1083, United Pottery Workers of America, affiliated with the Congress of Industrial Organizations be required to produce evidence of its authority to act as plaintiff and for whom it is acting, not upon a majority vote of the members of its own union but it must be the individual designation by each person who has selected the Union to act as its agent. This Court holds that under the Act, Title 29, Section 203(a) the Union has the authority to act for those persons who may select it—subject, of course, to the above showing.

All other motions are denied, without prejudice.

Frank A. Picard,
United States District Judge.

## DESIGNATION

(Filed July 8, 1941)

The undersigned hereby authorize the United Pottery Workers of America, affiliated with the C.I.O., Local 1083, to act as plaintiff in the above entitled action and we each hereby designate said Union to act as our respective agent in the prosecution of said action for unpaid overtime compensation and minimum wages owing us under or by virtue of said Fair Labor Standards Act of 1938.

Albert Weier
Delia Weier
Edna Eschenburg
Martin Kukuk
Curtis Copeland
Dorothy Ahlers
John Rachow
Louis Ludeman
Gertrude Cross
Arthur Eckert
Lawrence Miller
Theodore Miller
James D. Osborne

## DESIGNATION

(Filed July 8, 1941)

The undersigned hereby authorize the United Pottery Workers of America, affiliated with the C.I.O., Local 1083, to act as plaintiff in the above entitled action and we each hereby designate said Union to act as our respective agent in the prosecution of said action for unpaid overtime compensation and minimum wages owing us under or by virtue of said Fair Labor Standards Act of 1938.

Walter Selk
Jean Tewksbury
Mary Rozanski
Henry Kauten
William Alband
Robert Gombert
Edwin Weier
Arthur Daigneult
Earl C. Masters
B. Stark
Carl Schoof

## DESIGNATION

(Filed July 8, 1941)

The undersigned hereby authorize the United Pottery Workers of America, affiliated with the C.I.O., Local 1083, to act as plaintiff in the above entitled action and we each hereby designate said Union to act as our respective agent in the prosecution of said action for unpaid overtime compensation and minimum wages owing us under or by virtue of said Fair Labor Standards Act of 1938.

Harry May
Norma Kethe
Eva Freddle
Mabel Van Rosenberg
Esther Noe
Alma Stanke
Chesley Tebo
Ilene Starkey
Evelyn Mae Brede
Bernice Brede
Margaret Logghe
Ruth Rondo
Marian Kandt
Ruth Gooley
Pat Garcia
George E. Schroeder
Emerson Ulman
Delbert Phillips
Merle Batkins
Verlon Spicer
Ruth Parrott
Elsie Teise
Beatrice Schramm
Robert Daniels
Helen Daniels
Lavina Goldenbogen
Shirley Collins
Marie Miller
Virginia Lulay
Rita Sabatini
Francis Godin
Burnetta Young
Eila Contri

## DESIGNATION

(Filed July 5, 1941)

The undersigned hereby authorize the United Pottery Workers of America, affiliated with the C.I.O., Local 1083, to act as plaintiff in the above entitled action and we each hereby designate said Union to act as our respective agent in the prosecution of said action for unpaid overtime compensation and minimum wages owing us under or by virtue of said Fair Labor Standards Act of 1938.

Arthur Baxter
Floyd Hasse
Martha Peters
Steve Anderson
Elmer Sahrow
Nick Dacko
John Felong
Louis Collin
Albert Thomas
Fred V. Pearl
Floyd Pearl
Marie Pearl
Clayton Masters
Walter Thoel
Tom Tesner
LaVerne Kotzke
John Weiner
Walter Brandt
Paul Starkey
Edwin E. Suer
Anna Mayabb
Earl Trombley
Clarence Schwartz
Nelson Luchtman
Louis Thoel
Andrew Heisner
Arthur Pretzer
Howard Blumeister
Paul Siewart
Gerald Hotchkiss
David Kandt

## DESIGNATION

(Filed July 8, 1941)

The undersigned hereby authorize the United Pottery Workers of America, affiliated with the C.I.O., Local 1083, to act as plaintiff in the above entitled action and we each, hereby designate said Union to act as our respective agent in the prosecution of said action for unpaid overtime compensation and minimum wages owing us under or by virtue of said Fair Labor Standards Act of 1938.

Ruth Gottschalk
Esther Sonntag
Pauline Fobbe
Marion Fetty
Dorothy Weiner
Emma E. Sahr
Margaret Campbell
Gladys Harms
Lorraine Zieman
Margaret Zieman
Mary Phillips
Mildred Zienert
Edna G. Nicks
Eleanora Ulhrich
Viola Harms
Barbara Boeling
Dorothy Kempff
Ethel Socia LaForest
Helen Kuzdzal
Helen Haus
Lia DeKiere
Mary Sawicki
Mary Scheible
Lorraine Jackson
Mary Cowhy
Lucille Pretzer
Esther Hurtienna
Elvira Hicks
Glen Stafford
John Ritter
Viola Thurman
Frank Sutton
Anthony Petrucci
Robert Wilder
Eva Pierzina
Eliz. Campau
Olga Neal
Elizabeth Marleau
Gertrude Boyer
Alfred Paliniewicz
Elsie Elgert
Edna Scheible

Marie Kanekowski
Elizabeth Tupschov
Ruth Jackson
Margaret DeKiere
Elaine Richards
Leona DeBusschere
Adelia Rauschelbach
Josephine Schuster
Ruth Bruder
Janet Olewnicki
Genevieve Olewnicki
Agnes Manchik
Molly Bruder
Carl Nicka
Shirley Fox
Leo Stafford
Clair Dubay
Paul Kaiser

George Ehrke
Jennie Mallast
Helen Redlawski
Marjory Engelbrecht
Leona Schroeder
Helen Gutt
Katherine Kulman
Beatrice Beach
Florence Kleinhans
Wanda Jakubiak
Virginia Krohn
Stella Jurek
Viola Meyers
Emma Harms
Evelyn Crombez
Artilla Weier
Walter Ciscke

## DESIGNATION

(Filed July 8, 1941)

The undersigned hereby authorize the United Pottery Workers of America, affiliated with the C.I.O., Local 1083, to act as plaintiff in the above entitled action and we each hereby designate said Union to act as our respective agent in the prosecution of said action for unpaid overtime compensation and minimum wages owing us under or by virtue of said Fair Labor Standards Act of 1938.

| | |
|---|---|
| Arthur Sibbe | Elinor Bohorski |
| Ray Trombley | Evelyn Hildinger |
| Wesley Reeder | Rita Schulte |
| Robert Hicks | Dorothy Gaffke |
| James Browne | Tinnie Zavaruka |
| Bob Jackson | Louise Cronk |
| Samuel Howcroft | Twila Mayabb |
| Bertha Hildinger | Florence Schuetzler |
| Luella Rohrbeck | Louise Jackman |
| Lillian Socia | Marion Schleussler |
| Stella Baade | Edith Kenney |
| Helen Apfel | Olive Hay |
| Leona Zychski | John Metz |
| Katherine Osterman | Harold Pearl |
| Agnes Goldenbogen | Claude Cottrell |
| Hilda Gohl | Joyce Brusseau |
| Marie Leenkneght | Clarence Burgess |
| Kathryn Vertin | Catherine May |
| Margaret Yochum | Elsie Graham |
| Olga Denisuik | Walter Nofzinger |
| Susie Crewe | Kurt Jankowski |
| Marvin Goldenbogen | Shirley Schroeder |

Violette Bell
Martha Lozen
Paul Frazho
Julia Kudla
Antoinette Kudla
Wells Clay
Stanley Reeder
Preston Smith
Albert Schippocasse
Kenneth Jorgenson
Kay Snyder
Wilma Redlawski
Albert Watkins
Wm. Wendt
Earl Larimer
Louis Thurman
Adam Lehl
Marcel Dupont
Dorothy May
Julia Bousson

Harold Chaltron
Francis Watkins
Ernest Glawe
Leo DeScheppers
Clarence Liebzeit
Raymond Barg
Esther Sopha
Bernhardt Sopha
Sherman Bingle
Emerson Conners
George Liebzeit
Donald McVicar
Martha Cumeralto
Ann Rettig
Eileen Burtle
Harry Lozon
George Houthoofd
Thomas Persinger
Jerome Houthoofd

## DESIGNATION

(Filed Sept. 29, 1941)

The undersigned hereby authorize the United Pottery Workers of America, affiliated with the C.I.O., Local 1083, to act as plaintiff in the above entitled action and we each hereby designate said Union and the named plaintiffs to act as our respective agent in the prosecution of said action for unpaid overtime compensation and minimum wages owing us under or by virtue of said Fair Labor Standards Act of 1938.

Huela H. Wilson, 15, Mt. Clemens.
Frank Campau, Box 77, Mt. Clemens.
Eric Sopha, 160 Barbara, Mt. Clemens.
Mikel Schohn, 69 Euclid Ave., Mt. Clemens.
Glenn Dill, 2770 Houron Rockester, Mt. Clemens.
Arthur J. Meitz, 432 Cass Ave., Mt. Clemens.
Russell Shattuck, Washington, Mich.
Paul A. Frazho, 2268 Union Lake.
E. Miller.
Helen Persinger, 3201 Utica Rd., Utica, Mich.
Ruth Krause, R. No. 2, Mt. Clemens.
Otto Kuhuh, 4918 Canal Road.
John Schalm, 69 Euclid Ave.
Paul Siencert, 129 Meadle St., Mt. Clemens.
Norman Almstedt.
Elmer Glefke.

## BILL OF PARTICULARS

(Filed Oct. 23, 1941)

Now comes the plaintiffs and in response to the order of the Honorable Frank A. Picard, Judge of the District Court of United States for the Eastern District of Michigan, Southern Division, which order was entered upon the docket of this Court on the 13th day of June, 1941, file this Bill of Particulars.

In accordance with the order aforesaid (Paragraph 4, Page 1) four classifications are set forth, to-wit:

(1) Those employees who claim "overtime,"

(2) Those employees who have received "sub-minimum wages,"

(3) Those employees who performed "home work," and

(4) Those employees whose "records have been falsified."

### I

### OVERTIME

Plaintiffs in pursuance to the order of the Honorable Frank A. Picard, Judge of the District Court of the United States for the Eastern District of Michigan, Southern Division, have heretofore filed with the clerk of this Court a list of the employees of the Mt. Clemens Pottery Com-

pany whom they represent in this action. A copy of said list of employees is attached hereto and for the purpose of this Bill of Particulars is referred to as Exhibit "A." Each of said employees claims overtime.

## II

## SUB-MINIMUM WAGES

In accordance with the order of the Honorable Frank A. Picard, Judge of the United States District Court, Eastern District of Michigan, Southern Division, authorization to represent certain employees has been filed with the Clerk of this Court. Copy thereof is attached hereto and made a part hereof and the same is marked Exhibit "A."

Plaintiffs on information and belief allege the fact to be that the female employees listed in said Exhibit "A" received "sub-minimum wages," to-wit: less than 30¢ an hour, the minimum permitted under the Fair Labor Standards Act of 1938.

## III

## HOME WORK

Under the order of the Honorable Frank A. Picard, Judge of the District Court of the United States for the Eastern District of Michigan, Southern Division, authorization of the plaintiffs to act in behalf of employees of the Mt. Clemens Pottery Company was filed with the Clerk of this Court and same is marked Exhibit "A" and is attached hereto and made a part hereof.

Plaintiffs are informed and on such information and belief state that certain females employed in said Com-

pany therein performed "home work." Plaintiffs are not able to give the names of said female employees performing "home work," the same not appearing on the records of the defendants examined by these plaintiffs. That said information, however, is in the exclusive possession of the defendant, Mt. Clemens Pottery Company, and plaintiffs are not able at this time to furnish defendants with the names of said persons doing such "home work."

## IV

## RECORD FALSIFICATION

Under the order of the Honorable Frank A. Picard, Judge of the United States District Court, Eastern District of Michigan, Southern Division, plaintiffs have furnished the Clerk of this Court with written authorization of the employees for whom said plaintiffs bring this action. Copy of said authorization is marked Exhibit "A" and the same is attached hereto and made a part hereof.

The record of each of the employees whose names appear in Exhibit "A," represented by these plaintiffs, and purporting to show the hours worked by said employees are each incorrect and false. Said records do not reveal the time worked by said employees. The defendant, Mt. Clemens Pottery Company, has credited each employee of said Company with less than the actual time worked.

The time cards of each of said employees reveal the actual time worked, but the computation of the total hours worked has been falsified and incorrectly computed. There is attached hereto and set forth below sample time card records which are characteristic and typical of all of the time cards of all of the employees of said Mt. Clemens Pottery Company, including those whose names appear on Exhibit "A."

Ray Trombley—Payroll No. 685—Ending Dec. 5, 1939
Social Security No. 370-10-0179

| | A.M. In | Noon Out | Noon In | Night Out | Company Time | Actual Time Worked |
|---|---|---|---|---|---|---|
| Wed. | 6:46 | 12:01 | 12:46 | 4:21 | 8¼ | 8 hours, 50 min. |
| Thur. | 6:46 | 12:01 | 12:46 | 4:22 | 8¼ | 8 hours, 51 min. |
| Frf. | 6:46 | 12:01 | 12:46 | 4:35 | 8½ | 9 hours, 14 min. |
| Mon. | 6:47 | 12:01 | 12:46 | 4:29 | 8¼ | 8 hours, 54 min. |
| Tues. | 6:46 | 12:02 | 12:46 | 4:35 | 8½ | 9 hours, 5 min. |
| Wed. | 6:46 | 12:01 | 12:46 | 4:10 | 8 | 8 hours, 39 min. |
| Thur. | | | | | | |
| Fri. | 6:47 | 12:01 | 12:46 | 4:09 | 8 | 8 hours, 36 min. |
| Sat. | 6:46 | 11:47 | 1:01 | 4:40 | 8 | 8 hours, 40 min. |
| Mon. | 6:46 | 12:01 | 12:46 | 4:32 | 8½ | 9 hours, 1 min. |
| Tues. | 6:45 | 12:00 | 12:46 | 4:14 | 8 | 8 hours, 43 min. |
| | | | Total | | 82¼ | 88 hours, 36 min. |

Violette Bell—Payroll No. 1216—Ending Dec. 12, 1939

| | A.M. In | Noon Out | Noon In | Night Out | Company Time | Actual Time Worked |
|---|---|---|---|---|---|---|
| Wed. | 7:03 | 11:57 | 12:34 | 3:57 | 7½ | 8 hours, 17 min. |
| Thur. | 7:04 | 11:56 | 12:33 | 3:55 | 7½ | 8 hours, 14 min. |
| Fri. | 7:04 | 12:01 | 12:33 | 3:45 | 7¾ | 7 hours, 59 min. |
| Mon. | 7:04 | 11:59 | 12:34 | 3:12 | 6¾ | 7 hours, 33 min. |
| Tues. | 7:03 | 11:55 | 12:33 | 4:27 | 8 | 8 hours, 46 min. |
| Wed. | 7:04 | 11:58 | 12:34 | 4:28 | 8 | 8 hours, 48 min. |
| Thur. | 7:03 | 11:58 | 12:33 | 4:28 | 8 | 8 hours, 50 min. |
| Fri. | 7:03 | 11:42 | 12:32 | 4:35 | 8 | 8 hours, 42 min. |
| Sat. | | | | | | |
| Mon. | 7:04 | 11:52 | 12:33 | 4:26 | 8 | 8 hours, 41 min. |
| Tues. | 7:03 | 11:58 | 12:33 | 4:18 | 8 | 8 hours, 40 min. |
| | | | Total | | 77½ | 84 hours, 30 min. |

Luella Rohrbeck—Payroll No. 806—Ending Dec. 12, 1939
Social Security No. 377-18-2048

| | A.M. In | Noon Out | Noon In | Night Out | Company Time | Actual Time Worked |
|---|---|---|---|---|---|---|
| Wed. | 6:33 | 11:54 | 12:37 | 3:31 | 7¾ | 8 hours, 15 min. |
| Thur. | 6:33 | | | | | |
| Fri. | 6:32 | 11:56 | 12:35 | 3:51 | 8 | 8 hours, 40 min. |
| Mon. | 6:32 | 11:55 | 12:36 | 3:47 | 8 | 8 hours, 34 min. |
| Tues. | 6:33 | 11:54 | 12:36 | 3:47 | 8 | 8 hours, 32 min. |
| Wed. | 6:32 | 11:54 | 12:37 | 3:50 | 8 | 8 hours, 35 min. |
| Thur. | 6:32 | 11:54 | 12:37 | 3:51 | 8 | 8 hours, 36 min. |
| Fri. | 6:32 | 11:54 | 12:52 | 3:45 | 7¾ | 8 hours, 18 min. |
| Sat. | | | | | | |
| Mon. | 6:32 | 11:52 | 12:37 | 3:47 | 8 | 8 hours, 30 min. |
| Tues. | 6:33 | 11:53 | 12:36 | 3:48 | 8 | 8 hours, 32 min. |
| | | | Total | | 71½ | 76 hours, 32 min. |

Robert Jackson—Payroll No. 1301—Ending Dec. 12, 1939
Social Security No. 376-16-2280

| | A.M. In | Noon Out | Noon In | Night Out | Company Time | Actual Time Worked |
|---|---|---|---|---|---|---|
| Wed. | 6:52 | 11:55 | 12:51 | 4:37 | 8¼ | 8 hours, 49 min. |
| Thur. | 6:51 | 11:53 | 12:51 | 4:41 | 8¼ | 8 hours, 52 min. |
| Fri. | 6:51 | 11:54 | 12:51 | 5:11 | 8¾ | 9 hours, 23 min. |
| Mon. | 6:50 | 11:54 | 12:51 | 4:36 | 8¼ | 8 hours, 49 min. |
| Tues. | 6:51 | 11:52 | 12:54 | 4:30 | 8¼ | 8 hours, 37 min. |
| Wed. | 6:51 | | | 3:39 | 8½ | 8 hours, 48 min. |
| Thur. | 6:51 | 12:21 | | 4:54 | 9 | 10 hours, 03 min. |
| Fri. | 6:50 | 11:52 | 1:05 | 5:30 | 9 | 9 hours, 27 min. |
| Mon. | 6:50 | 11:50 | 1:01 | 4:53 | 8¼ | 8 hours, 52 min. |
| Tues. | 6:51 | 11:48 | | 2:01(4:43)7 | | 7 hours, 39 min. |
| | | | Total | | 83½ | 89 hours, 43 min. |

Bertha Hildinger—Payroll No. 1011—Ending Dec. 12, 1939
Social Security No. 370-09-9874

| | A.M. In | Noon Out | Noon In | Night Out | Company Time | Actual Time Worked |
|---|---|---|---|---|---|---|
| Wed. | 6:50 | 11:59 | 12:49 | 4:13 | 7¾ | 8 hours, 33 min. |
| Thur. | 6:49 | 11:59 | 12:49 | 4:12 | 7¾ | 8 hours, 33 min. |
| Fri. | 6:50 | 11:58 | 12:49 | 4:12 | 7¾ | 8 hours, 28 min. |
| Mon. | 7:01 | 11:51 | 12:49 | 4:18 | 7¾ | 8 hours, 25 min. |
| Tues. | | | | | | |
| Wed. | 6:49 | 12:06 | 12:49 | 4:11 | 8 | 8 hours, 39 min. |
| Thur. | 6:50 | 12:06 | 12:49 | 4:07 | 8 | 8 hours, 34 min. |
| Fri. | 6:49 | 12:03 | 1:04 | 4:35 | 8¼ | 8 hours, 45 min. |
| Mon. | 7:01 | 11:55 | 12:49 | 4:29 | 7¾ | 8 hours, 34 min. |
| Tues. | 6:49 | 11:59 | 12:49 | 4:10 | 7¾ | 8 hours, 31 min. |
| | | | Total | | 70¾ | 78 hours, 2 min. |

The foregoing examples of the time worked, together with the computations of said Company are typical of all the time cards of said employees of the said Mt. Clemens Pottery Company and indicate the erroneous computations of said Company and the manner by which said Company deprived each of said employees of a true and correct record of and payment for the total hours worked. Said Mt. Clemens Pottery Company has not paid any of the employees whose names appear on said Exhibit "A" for the actual time worked.

Respectfully submitted,

Edward Lamb,
Counsel for Plaintiffs.

## MOTION TO STRIKE OR FOR FURTHER PARTICULARS

(Filed Nov. 1, 1941)

Comes now The Mt. Clemens Pottery Company, one of the defendants in the above entitled cause, by Beaumont, Smith & Harris, its attorneys, and moves (A) that the plaintiffs' complaint herein be stricken because of plaintiffs' failure to comply with the order of this Court as to furnishing particulars and a more definite statement of claim, or (B) that plaintiffs be required to furnish further particulars and a more definite statement of their claim as hitherto ordered to enable this defendant properly to prepare its responsive pleadings, or to prepare for trial, and (C) that Subdivision IV of the purported bill of particulars heretofore filed herein be stricken and that the Court make such further order as it deems just. This motion is based on the provisions of the rules of civil procedure (and particularly Rule 12 thereof) and on the following facts and circumstances:

1. Heretofore, to-wit, on June 13, 1941, plaintiffs were required by an order of this Court to furnish a bill of particulars (1) showing by individual designations the persons claimed to be represented by plaintiffs, and (2) setting forth which of such individuals are claimed to be within each of the categories or classifications described in the complaint herein, wherein the divers claims of the several plaintiffs were classified under certain headings.

2. To enable the plaintiffs to obtain all the information desired in order to furnish a bill of particulars, this defendant made available to plaintiffs in Detroit, Michigan,

its records as to the hours worked by said plaintiffs and by the employees claimed to be represented by them, and as to the wages received by such individuals. Defendant engaged an independent auditor, who was particularly familiar with such books and records, to explain the same to plaintiffs' attorney; and plaintiffs were furnished all available information requested by them as to all their several claims.

3. On or about October 23, 1941, plaintiffs served on this defendant a certain so-called bill of particulars, but the bill so furnished is not in compliance with the order of this Court, and does not contain the information necessary to enable this defendant properly to plead or to prepare for trial. And in this connection, this defendant shows unto the Court more particularly:

A. The bill of particulars does not comply with the aforementioned order of this Court, dated June 13, 1941, in that it makes no attempt to specify which of the plaintiffs, if any, fall within the following classifications or divisions set forth in the complaint:

(a) The complaint charged that employees were required to work 45 hours a week without extra compensation for overtime; but the bill of particulars fails to specify any individuals claimed to fall within this classification; and defendant shows that the complaint should be stricken or that plaintiffs should be required to state whether this claim is abandoned or, if not, which of the plaintiffs are claimed to fall within this classification, as required by this Court's prior order.

(b) The complaint charged that employees began work in advance of the time shown on their time clock cards and quit work later than the time shown on such cards; but the bill of particulars fails to specify any individuals

falling within this designation; and defendant shows that plaintiffs' complaint should be stricken or that plaintiffs should be required to abandon this claim or to specify, as required by the Court's prior order, which employees are claimed to fall within this classification.

(c) The complaint further charged that as to another class of employees, defendant violated the Fair Labor Standards Act and falsified its records by requiring employees to sign blank vouchers which were afterwards filled in by the company to indicate alleged hours worked and wages paid. However, the bill of particulars fails to specify any individuals claimed to fall within this division or classification; and the complaint should be stricken or plaintiffs should be required in accordance with the prior order of the Court to specify what individuals are claimed to fall within this class, or else to abandon the claim.

(d) The complaint further charged that women employees in defendant's decorating department were required to do "decal" work at home without compensation, but despite the requirements of this Court's order requiring plaintiffs to specify what employees were claimed to fall within this category and despite the fact that many women employees are claimed to be represented by plaintiffs, nevertheless the bill of particulars fails to specify any individuals claimed to fall within this category. Instead, the bill avers that plaintiffs are unable to furnish this information, and defendant shows that in the absence of the giving of such information, the claims based on alleged homework should be stricken.

(e) Similarly, the bill of particulars fails to specify what women employees are claimed to have received subminimum wages; and for this further reason the complaint should be stricken or plaintiffs should be required to furnish particulars as ordered by the Court or to abandon this claim.

(f) Further, this defendant shows unto the Court that the following classifications or divisions are set up in the complaint but, despite this Court's order and despite plaintiffs' examination of defendant's records, nevertheless no particulars have been given as to the identity of the individuals claimed to fall within any of the following classifications:

(i) A group of 40 women employees whose clock cards were "punched out" by their foreman before the employees stopped work, on September 15, 1940, and on other occasions.

(ii) Employees from whose wages it is alleged this defendant deducted certain fixed percentages, in violation of the law.

(iii) Employees who it is claimed were shifted from one job to another, at a continuation of an alleged "beginner's rate" of pay.

(iv) Employees claimed to be compensated on a "bonus" basis.

Defendant shows unto the Court that therefore the complaint should be stricken, or plaintiffs should be required, in accordance with the prior order of the Court, to specify the individuals claimed to fall within each of the aforesaid categories, or else abandon these claims.

B. The said bill of particulars wholly fails to set forth plaintiffs' claims with sufficient definiteness to enable defendant properly to prepare its responsive pleadings or to prepare for trial, no specific statement being given as to any of the following:

(a) The basis and meaning of the general allegation in said bill of particulars that each of the employees represented by plaintiffs claims "overtime" is not made clear. Plaintiffs' examination of defendant's records dis-

closed that all plaintiffs were paid extra compensation for all hours of overtime work, as computed and recorded in this defendant's records; and therefore unless plaintiffs specify in what respects it is claimed their hours of work were greater than those for which they were paid, it will be quite impossible for this defendant to know what the actual claim of the plaintiffs may be in this regard.

(b) The pleadings do not reveal the basis of the claim that certain women employees among the plaintiffs are "believed" to have received sub-minimum wages, although this defendant's records, examined by plaintiffs, show that all of this defendant's women employees receive wages at least equal to, and that nearly all of them receive wages well above, the minimum provided by law.

(c) The plaintiffs have furnished no particulars as to the nature of the claim that none of the plaintiffs have been paid for actual time worked, and this defendant is unable properly to prepare its responsive pleadings or to prepare for trial without such information. In this connection, this defendant shows that all or nearly all of the plaintiffs are compensated on a piece-work basis, and therefore at least in weeks where their hours of work do not exceed the maximum provided by statute, their compensation does not in any manner depend on the hours worked; nevertheless plaintiffs in their bill of particulars refer to certain specific instances wherein employees admittedly working fewer hours than the maximum fixed by law (even on plaintiffs' theory that all the time spent by the employee on defendant's premises constituted hours of work) are claimed not to have been paid for the actual time worked.

(d) The said bill of particulars wholly fails to specify what amount is claimed for each employee, or how such claimed amount is computed, or when it accrued; and

therein fails to comply with long standing requirements and practices as to the nature of bills of particulars.

(e) This defendant further shows that the bill of particulars utterly fails to accomplish the purpose described in this Court's prior order, i. e., eliminating the necessity of defendant being ready in court with every record of every plaintiff, by completing before trial all the preliminary work of computing the amount of each plaintiff's claim, and the basis thereof.

C. That portion of the bill of particulars headed "IV. Record Falsification" should be stricken in its entirety, for the reason that it is immaterial to any of plaintiffs' claims, inasmuch as Section 16(b) of the Fair Labor Standards Act, under which this action is alleged to be brought does not create any right of action for damages based on alleged errors in the keeping of records by an employer as to hours worked by employees.

Wherefore, defendant prays that this Court enter an appropriate order or orders:

(a) Striking the complaint because of plaintiffs' failure to furnish particulars as hitherto ordered by the Court, or requiring the furnishing of such particulars in accordance with the Court's prior order, as to the details described in Subdivision 3A of this motion;

(b) Requiring plaintiffs to furnish defendant (if the complaint is not stricken) with further particulars as to the details described in Subdivision 3B of this motion;

(c) Striking Subdivision IV of the purported Bill of Particulars heretofore filed by plaintiffs.

In support of this motion, defendant will rely on the Court rules in such case made and provided, and on the pleadings and orders in this cause, and on the affidavit annexed hereto.

Beaumont, Smith & Harris,
Albert E. Meder,
Frank E. Cooper,
Attorneys for Defendant, Mt. Clemens Pottery Company,

2900 Union Guardian Building,
Detroit, Michigan.

Dated: Oct. 31, 1941.

## AFFIDAVIT

State of Michigan,
County of Macomb—ss.

CHARLES E. DOLL, being first duly sworn, deposes and says that he is a resident of the City of Mount Clemens, Macomb County, Michigan, and is the Vice President and General Manager of The Mt. Clemens Pottery Company, one of the defendants in the above entitled cause, and makes this affidavit in support of the annexed motions.

Deponent denies the allegation in the purported bill of particulars filed by plaintiffs that information as to the names of women employees performing "home work," as alleged in the complaint, is in the exclusive possession of the Mt. Clemens Pottery Company, and on the contrary deponent says that none of the employees of the Mt. Clemens Pottery Company have ever been permitted to take any work out of the plant, and the company has no knowledge nor does deponent of the nature of plaintiffs' claims in this regard.

Deponent further says that following and pursuant to the order of this Court dated June 13, 1941, he arranged

through his attorneys to make available to plaintiffs all of the records of the Mt. Clemens Pottery Company as to the hours worked by the employees represented in this action, and the wages received by them; and deponent further arranged for the presence of an auditor, who was thoroughly familiar with such books and records, to explain them to plaintiffs' attorney; and deponent directed that plaintiffs' attorney be assured that this defendant would segregate such records and look up all information requested as rapidly as plaintiffs' compilers might require in order to complete their examination. Deponent further says that neverthless, after an examination of such records had been carried on for some days by plaintiffs' representatives, the same was discontinued without notice to this defendant, and despite an appointment to continue such examination.

Deponent further says that to the best of his knowledge The Mt. Clemens Pottery Company has at all times fully complied with the requirements of the Fair Labor Standards Act, and he believes the broad charges in the complaint, which plaintiffs refuse to particularize, to be without foundation; and in this connection deponent points out that the only particular claim made is to the effect that the said company in computing hours worked by its employees did not include odd minutes spent by an employee on company premises before the start of work, or after the close of work and deponent further says as to this that the method in which such computations were made was approved by the Wage and Hour Division and by the employees and was entirely proper and lawful, as deponent is advised and believes.

Chas. E. Doll.

Subscribed and sworn to before me
this 1st day of November, 1941.

Agnes E. Benbennick,
Notary Public, Macomb County, Mich.
My commission expires Feb. 21, 1943.

## ORDER

(Filed Nov. 10, 1941)

At a session of said Court held at the Federal Building, in the City of Detroit, County of Wayne, State of Michigan, on the 10th day of November, 1941.

Present: Honorable Frank A. Picard, District Judge.

This matter comes before the Court upon the motion of the defendant Mt. Clemens Pottery Company to strike plaintiffs' complaint or that plaintiffs be required to furnish further particulars, and the Court being fully advised in the premises, and after hearing argument of counsel for all parties, finds as follows:

1. That the motion of the defendants to strike the complaint is not well taken and should be and is hereby overruled.

2. That the motion of the defendant Mt. Clemens Pottery Company for further particulars as to a list of the employees who seek overtime is not well taken; the Court finds that said list has been furnished by plaintiffs in the "Exhibit A" which has been attached to plaintiffs' Bill of Particulars heretofore filed.

3. Plaintiffs by their counsel in open Court having stated that they are unable or unwilling to furnish a list of employees who fall into the classification of those claiming compensation for "home-work," and the Court therefore finds said claims are waived by the named plaintiffs herein. Plaintiffs shall furnish names of those em-

ployees who claim minimum wage compensation and also the names of those employees who claim greater hours worked than those shown on the time cards.

4. Plaintiffs shall, on or before November 24, 1941, file an amendment to the Bill of Particulars heretofore furnished, which amendment shall set forth the claims upon which said named plaintiffs assert that the hours worked and the wages paid by defendant Mt. Clemens Pottery Company were erroneously computed. The Court orders said defendant Mt. Clemens Pottery Company to have all records of wages paid and hours worked by the plaintiffs whose names appear on "Exhibit A" from September 24, 1938, to the date of the filing of the complaint herein made available for examination by plaintiffs' agents. The Court further finds that if said records are not made available to the agents of the plaintiffs whose names appear on "Exhibit A" attached to said Bill of Particulars, then and in that event said Court will appoint its own agent to examine said records.

All other motions are denied, without prejudice.

Frank A. Picard,
United States District Judge.

## ORDER

(Filed Nov. 24, 1941)

At a session of said Court held at the Federal Building, in the City of Detroit, County of Wayne, State of Michigan, on the 24th day of November, 1941.

Present: Honorable Frank A. Picard, District Judge.

The Court having been advised that counsel for all parties have been diligently pursuing the examination of the records herein finds that said examination cannot be completed on or before November 24, 1941.

The Court, therefore, amends its order entered herein on November 10, 1941, to permit the plaintiffs herein to file their Amendment to the Bill of Particulars on or before December 15, 1941.

Frank A. Picard,
United States District Judge.

## AMENDMENT TO PLAINTIFF'S BILL OF PARTICULARS

(Filed November 26, 1941)

Now come the plaintiffs and, pursuant to an order of the Honorable Frank A. Picard, District Judge for the Eastern District of Michigan, Southern Division, entered on the docket of this court November 10, 1941, and file this Amendment to their Bill of Particulars.

I.

Pursuant to paragraph number 3 of said order, plaintiffs state that there is attached hereto and marked "Exhibit B" a list of those plaintiffs who claim minimum wage compensation, and also the names of employees who claim greater hours than those shown on the time cards of said employees of The Mt. Clemens Pottery Company.

II.

Plaintiffs state in answer to paragraph number 4 of said order of November 10, 1941, that the claims upon which the named plaintiffs herein assert that the hours worked and the wages paid by defendant, Mt. Clemens Pottery Company, were erroneously computed, arise in the following manner:

(A) The defendant Mt. Clemens Pottery Company does not pay the employees for the time worked, nor does said company pay said employees in accordance with the time set forth on the time cards maintained by said Mt. Clemens Pottery Company. For all the time worked by all of the named plaintiffs and by all those

whose names appear on "Exhibit A" of the Bill of Particulars, as well as in the cases of all other production employees of the Mt. Clemens Pottery Company, the said company has deducted from the time worked, as shown on said time cards, a period of as much as 56 minutes each day. The company accomplishes this deduction from the time worked by the method of crediting employees with the working time only from the succeeding quarter-hour when an employee checks in, and the company credits said employee with work performed only from the preceding quarter-hour period when the employee checks out at noon or at the conclusion of the employee's shift. For instance, an employee who reports and begins work at 6:46 A.M., is credited with working only for work from 7:00 A.M. When the same employee checks out to lunch at 12:14, the company, in paying said employee, pays him only for work up to 12:00 noon. When he reports back from lunch at 12:46 P.M., the company pays him only for time worked from 1:00, and when he reports out at night at 4:29, the company pays him only for work to 4:15. This situation is true of every time card of every employee in The Mt. Clemens Pottery Company, and is specifically true of every employee whose name appears on Exhibits A and B of this Bill of Particulars and the Amendment to the Bill of Particulars.

Materiality of this is shown in paragraph (B) hereof, where the employees work the statutory number of hours, according to the company's erroneous and false computation of the hours worked, but plaintiffs state that each time card and the computation thereof is false as to every employee whose name appears on Exhibits A and B. The following are examples only of what is true in every case of every employee of The Mt. Clemens Pottery Company.

Louise Jackman, for the period ending June 11, 1940, checked in on Monday at 6:50 A.M., out at 12:00 noon,

returned from lunch at 12:51, and worked until 4:27. The company's computation for time was 8¼ hours. She actually worked 8 hours and 46 minutes. Each day the same false computation took place, but the company credited her with having worked only 84 hours for the two-week period ending June 11, 1940, so that the company paid her no overtime compensation.

Leo Stafford, Social Security card No. 370-10-1884, reported at 6:50 A.M., worked until 11:50 A.M., returned from lunch at 1:05, and quit work at 5:00 P.M. He actually worked 9 hours, but the company credited him on that day for 8½ hours.

For convenience, there follows examples of computations erroneously made for four of the plaintiffs herein, but the examples which are set forth are typical of every time card of all of the employees named in Exhibits A and B of plaintiffs' Bill of Particulars and the Amendment to the Bill of Particulars.

Samuel E. Hawcroft—Payroll No. 1300—Ending Dec. 12, 1939—Social Security No. 369-16-1698

| | A.M. In | Noon Out | Noon In | Night Out | Company Time | Actual Time Worked |
|---|---|---|---|---|---|---|
| Wed. | 6:53 | 12:57 | 1:47 | 4:25 | 8 | 8 hours, 42 min. |
| Thurs. | 6:56 | 2:42 | 2:53 | 4:39 | 9 | 9 hours, 32 min. |
| Fri. | 6:51 | 12:52 | 1:05 | 5:12 | 9½ | 10 hours, 11 min. |
| Mon. | 8:03 | 1:38 | | | 4¼ | 4 hours, 35 min. |
| Tues. | 6:53 | 12:00 | 12:45 | 4:40 | 8¾ | 9 hours, 2 min. |
| Wed. | 6:56 | 10:06 | | | 3 | 3 hours, 10 min. |
| Thurs. | 6:54 | 11:57 | 12:37 | 4:31 | 8½ | 8 hours, 57 min. |
| Fri. | 6:54 | 12:21 | 1:09 | 4:04 | 8 | 8 hours, 12 min. |
| Mon. | 6:55 | 1:07 | 1:51 | 5:41 | 9½ | 10 hours, 2 min. |
| Tues. | 6:53 | 12:03 | 1:14 | 4:20 | 8 | 8 hours, 16 min. |
| | | | Total | | 76½ | 80 hours, 39 min. |

## Wesley Reader—Payroll No. 669—Ending July 30, 1940
Social Security No. 370-09-9137

| | A.M. In | Noon Out | Noon In | Night Out | Company Time | Actual Time Worked |
|---|---|---|---|---|---|---|
| Wed. | 6:49 | 12:04 | 12:47 | 4:55 | 8¾ | 9 hours, 23 min. |
| Thurs. | 6:48 | 12:04 | 12:47 | 4:21 | 8¼ | 8 hours, 50 min. |
| Fri. | 6:48 | 12:04 | 12:48 | 4:32 | 8½ | 9 hours |
| Mon. | 6:47 | 12:04 | 12:48 | 4:33 | 8½ | 9 hours, 2 min. |
| Tues. | 6:47 | 12:04 | 1:02 | 4:48 | 8½ | 9 hours, 7 min. |
| Wed. | 7:02 | 12:05 | 12:47 | 4:33 | 8¼ | 8 hours, 53 min. |
| Thurs. | 6:47 | 12:02 | 12:47 | 4:23 | 8¼ | 8 hours, 51 min. |
| Fri. | 6:47 | 11:54 | 1:02 | 4:50 | 8¼ | 8 hours, 59 min. |
| Mon. | 6:48 | 12:02 | 12:47 | 5:45 | 8¾ | 9 hours, 2 min. |
| Tues. | 6:49 | 12:03 | 12:47 | 4:24 | 8¼ | 8 hours, 51 min. |
| | | | Total | | 84¼ | 89 hours, 58 min. |

## Arthur Sibbi—Payroll No. 920—Ending August 6, 1940
Social Security No. 370-10-2623

| | A.M. In | Noon Out | Noon In | Night Out | Company Time | Actual Time Worked |
|---|---|---|---|---|---|---|
| Wed. | 6:48 | 12:05 | 12:48 | 4:31 | 8½ | 9 hours min. |
| Thurs. | 6:48 | 12:05 | 12:48 | 4:23 | 8¼ | 8 hours, 52 min. |
| Fri. | 6:48 | 12:05 | 12:48 | 4:52 | 8¾ | 9 hours, 21 min. |
| Mon. | 6:48 | 12:05 | 12:48 | 4:18 | 8¼ | 8 hours, 47 min. |
| Tues. | 6:48 | 12:04 | 12:48 | 4:17 | 8¼ | 8 hours, 45 min. |
| Wed. | 6:48 | 12:05 | 12:47 | 4:28 | 8¼ | 8 hours, 58 min. |
| Thurs. | 6:48 | 12:04 | 12:48 | 4:17 | 8¼ | 8 hours, 45 min. |
| Fri. | 6:48 | 12:05 | 1:02 | 4:42 | 8¼ | 9 hours, 1 min. |
| Mon. | 6:48 | 12:05 | 12:48 | 4:33 | 8½ | 9 hours, 2 min. |
| Tues. | 6:48 | 12:05 | 12:48 | 4:34 | 8½ | 9 hours, 3 min. |
| | | | Total | | 83¾ | 89 hours, 34 min. |

ul Starkey—Payroll No. 258—Ending Feb. 27, 1940
Social Security No. 370-09-9907

| | A.M. In | Noon Out | Noon In | Night Out | Company Time | Actual Time Worked | Extra Time In | Extra Time Out |
|---|---|---|---|---|---|---|---|---|
| d. | | | 2:33 | 7:03 | 6¾ | 7 hours, 15 min. | 7:20 | 10:05 |
| urs. | | | 2:31 | 7:02 | 7¼ | 7 hours, 42 min. | 7:24 | 10:35 |
| | | | 2:37 | 6:55 | 6½ | 7 hours, 50 min. | 7:33 | 10:05 |
| n. | 5:52 | 10:28 | 10:53 | 2:50 | 8¼ | 8 hours, 33 min. | | |
| es. | 5:55 | 10:32 | 10:54 | 2:44 | 8 | 8 hours, 27 min. | | |
| d. | 5:51 | 10:32 | 10:56 | 1:29 | 6¾ | 7 hours, 15 min. | | |
| urs. | 5:51 | 10:30 | 10:56 | 2:44 | 8 | 8 hours, 27 min. | | |
| | 5:53 | 10:32 | 10:57 | 2:12 | 7½ | 7 hours, 54 min. | | |
| n. | | | 1:18 | 6:59 | 8¾ | 9 hours, 18 min. | 7:25 | 11:02 |
| es. | | | 2:35 | 7:04 | 7¼ | 7 hours, 44 min. | 7:24 | 10:39 |
| | | | Total | | 75 | 80 hours, 25 min. | | |

(B) The company erroneously computes the time worked by the employees so that they will work exactly the statutory number of hours and not have to pay overtime. This practice is true in the cases of all employees whose names appear on Exhibits A and B of the Bill of Particulars and the Amendment to the Bill of Particulars, but there is set forth hereinafter specific instances thereof, which examples are true of all other employees of said Mt. Clemens Pottery Company.

Dorothy May, for period ending February 11, 1941, is given credit for working a total of 80 hours during the two-week period. To accomplish this, the company computes her working time as 8 hours on each day of said period, although she checks in at 7:10 in the morning, out at 11:55, returns at 12:35, and quits work at 4:25 P.M. The time actually worked amounts to 8 hours and 35 minutes. Again for the two-week period ending January 28, 1941, Dorothy May is credited by the company with working only 80 hours, whereas she checked in at 7:04

in the morning, out at 11:56 noon, returned from lunch at 12:35 and quit work at 4:27, or an actual working time of 8 hours 44 minutes. The company, however, in each case credited her with working only 8 hours a day, in order that said company would not be required to pay overtime beyond the statutory limits, as set forth in the Complaint herein. While the statutory time, wherein the company would not have to pay overtime, was fixed by the Fair Labor Standards Act at 42 hours per week, the company's computation for a two-week period showed that Dorothy May worked 84 hours. For the two 2-week periods ending October 1 and October 15, 1940, the company credited her with working 8½ hours per day, when she worked in excess of 9 hours per day. For instance, she checked in at 7:04, checked out for lunch at 11:07, returned at 11:51, and quit work at 4:55, so that her actual working time was 9 hours and 7 minutes, but the company credited her and paid her only for 8½ hours. Again, for the two-week period ending October 11, 1940, the company credited her with working 84 hours. She was credited with working 8½ hours on the day when she reported in at 7:05, out at 11:55, returned from lunch at 12:34, and worked until 4:54 P.M. Her actual working time was 9 hours and 12 minutes.

Again, the time card of Leo Stafford for the period ending September 3, 1940, showed that the company credited him with working only 84 hours. He reported in at 6:31, out at 12:32. His actual working time was 6 hours and 1 minute, but the company credits him with only 5¾ hours. Again, he checked in at 6:50, worked until 11:41, returned from lunch at 12:34, and quit work at 4:22 P.M. The company credits him with having worked 8 hours, whereas his actual working time was 9 hours and 39 minutes. When the statutory time was 40 hours, Leo Stafford was given credit for working 80 hours in two weeks. For instance, in the period ending February 11, 1941, he reported in at 6:53, out at 11:51, returned from lunch at 12:36, and quit work at 4:10, or

an actual working time of 8 hours and 32 minutes, whereas the company credited him with having worked but 8 hours.

The examples set forth herein are typical of the erroneous computations made for all of the employees whose names appear on Exhibits A and B of the Bill of Particulars, and the Amendment to the Bill of Particulars.

(C) The Mt. Clemens Pottery Company did not accurately compute the time of employees worked in other cases than as set forth above where deductions of as much as 56 minutes were made by crediting the employee only with time worked from the succeeding quarter-hour. An example of the company's computation is revealed in cases similar to that of Leo Stafford for the period ending January 9, 1940. On Friday, he checked in at 6:51 and out at 11:51. He returned to work at 12:50, and stopped work at 4:49. The actual time worked is 9 hours, but the company computes the time at 8½ hours. On Thursday of the same week he checked in at 6:45, out at 11:51, returned from lunch at 12:51, and quit at 3:28, or a total of 7 hours and 39 minutes, but the company gives him credit for only 7 hours. Again Leo Stafford, for the period ending April 22, 1941, is credited by the company as having worked 4¾ hours on the day when he checked in at 6:50 and out at 11:53. He returned from lunch at 12:52 and the company records do not reveal the length of time which he worked that day. Harry Lozen checks in at 8:49 in the morning and worked until 11:42 A.M. He checked back from lunch at 12:33, and the time card does not reveal the length of time he worked in the afternoon, but the employee, Harry Lozen, is credited with having worked only 2½ hours on said date.

(D) The company erroneously computes the time of the employees and gives them credit for time worked only when they are doing piece work. All employees are re-

quired to do what is known as "charity work," such as setting up the machines for themselves and other employees, which operations take between three and eight hours, and no pay therefor is made, even though said employees are performing work for said Mt. Clemens Pottery Company. For instance, all of the employees in the Slip Room are required to work from two to three hours on Friday night cleaning up in said department and are not paid therefor. This work is performed by Walter Thoel and all other employees of said Slip Room.

Again, Paul Starkey and all other employees have been required to oil molds, and this operation requires work for periods of four to eight hours a day once a week, but no payment is made therefor to any of said employees.

(E) The Mt. Clemens Pottery Company makes certain unauthorized deductions from the wages of the employees whose names appear on Exhibits A and B of the Bill of Particulars and the Amendment to the Bill of Particulars (and from the wages of all other employees) for equipment used by said company. For instance, the buggies used by the company in transporting pottery products from one department to another are charged to the employees. Said deductions also include sponges, gloves and other equipment used by the company and its employees.

(F) The Mt. Clemens Pottery Company, through the process set forth in paragraph (A) above, had its foremen punch the time clock of employees in a manner to show that they took time out for lunch, whereas, in truth and in fact, said employees were not permitted to take time out for lunch until on and after April 1, 1940. For instance, the time card of the employee, Harold Pearl, shows that for the periods ending November 19, 1940, December 17, 1940, and December 31, 1940, he was charged with having one-half hour out for lunch. This was accom-

plished by The Mt. Clemens Pottery Company through the expedient of having the foremen punch the time clock out at 12:29 noon, and punch the time clock in at 12:31, so that the employee was deducted for one-half hour for a lunch period, whereas, in truth and in fact, said employee, as well as other employees whose names appear on Exhibits A and B hereof, was required to work without said lunch period. Other employees, including Dick Hotchkiss, Harold Pearl, Floyd Pearl and others whose names appear on Exhibits A and B hereof, had their time cards punched "out" at 3:29 and "in" at 3:31, and thus said Mt. Clemens Pottery Company was able to deduct one-half hour from the working time of said employees.

(G) The foremen of The Mt. Clemens Pottery Company punch the time cards so that employees were represented as having quit work, although they were required to continue after the time shown on said time card.

(H) The Mt. Clemens Pottery Company does not pay overtime, either on the base rate or piece work rate of the employees whose names appear on Exhibits A and B of the Bill of Particulars and the Amendment to the Bill of Particulars. This is true of all employees, but examples are set forth herein which are typical of the method of paying all employees. Clarence Burgess, for the week ending May 14, 1940, worked 53½ hours at 86 cents an hour and received straight time only, or $45.80. Paul Starkey worked for the period ending December 16, 1938, 108½ hours at 70 cents an hour and received therefor the sum of $75.83. Clarence Burgess for the two-week period ending July 11, 1939, worked 91 hours at $1.03 per hour, and was paid therefor the sum of $93.69. For the period ending October 3, 1939, Clarence Burgess worked 88½ hours at the rate of $1.08 per hour and received therefor $95.16. For the period ending March 7, 1939, Clarence Burgess worked 89 hours at $1.12 per hour and

got $99.68. No payments were made to said employee or others at the rate of time and one-half for the hours worked in excess of the statutory periods set forth in the Fair Labor Standards Act of 1938. Clarence Burgess, for the week ending April 16, 1940, worked 48 hours at 75 cents an hour. He and the other twenty men in the dipping department were paid at the rate of straight time for each of said 48 hours. Harold Chaltron for the period ending December 16, 1938, worked 104½ hours at the rate of $1.00 per hour, and was paid therefor the sum of $104.67. No payment was made for overtime. Leo Stafford, for the period ending December 11, 1938, worked within a 7-day work period 77¼ hours and was paid therefor at straight time only. Walter Nofsinger and Martin Miller both worked for the two-week period ending July 30, 1940, a total of 83½ hours and received pay at the rate of 99½ cents per hour, or a total of $82.66. No credit was paid therefor for the hours worked in excess of the statutory limits aforesaid.

(I) The Mt. Clemens Pottery Company makes deductions from the wages of employees for the services of so-called "invisible men." In other words, employees who work in a group, and are paid on a job piece work system, have deducted therefrom the pay of persons who allegedly helped on said jobs or who allegedly maintain the machinery in connection therewith. Thus, where Harold Pearl and T. Hotchkiss, for the period ending August 5, 1941, each worked 70 hours at $1.03 per hour, they had deducted from their wages the pay for a third person in the amount of $2.10 for 3½ hours of maintenance work allegedly performed by some third person at 60 cents per hour.

(J) The Mt. Clemens Pottery Company, through its agents, had the time cards of the employees improperly marked. For instance, all the time cards for the employees numbered 941 to 956, inclusive, for the periods

ending April 2, 1940, April 9, 1940, November 12, 1940 and November 19, 1940, all indicate that the starting time is exactly 6:46 A.M., and that the employees all left at 12:03, returned at 12:48, and quit work at 4:22. Again, the employees' time cards indicate a strange uniformity. For instance, the time card of Dorothy Gaffke, Social Security No. 383-01-3696, for every day of the two-week period ending November 12, 1940, indicates that she started work at exactly 6:51 A.M. each day, went out at exactly 11:59, returned from lunch at exactly 12:50, and quit work at exactly 4:08.

While plaintiffs contend that they have not been paid properly, even on the basis of the company's own time cards, we will contend at the hearing that certain practices, as outlined above, were followed by the company in order to prevent the plaintiffs receiving minimum wages and the overtime compensation to which they were entitled, as set forth aforesaid.

The foregoing, together with "Exhibit A," constitutes a list of those employees who claim minimum wage compensation, and also the names of those employees who claim greater hours worked than those shown on the time cards. The foregoing constitutes the nature of the claims upon which said plaintiffs assert that the hours worked and the wages paid by defendant, Mt. Clemens Pottery Company, were erroneously computed. Said Mt. Clemens Pottery Company has not paid any of its employees whose names appear on said Exhibits A or B contained in the Bill of Particulars and the Amendment to the Bill of Particulars herein for the actual time worked, nor for overtime.

Respectfully submitted,

Edward Lamb,
Counsel for Plaintiffs.

## EXHIBIT B

The following employees of The Mt. Clemens Pottery Company claim greater hours worked than those shown on the time cards of The Mt. Clemens Pottery Company, and each has unpaid overtime compensation owing him. Those employees who have an asterisk (*) marked after their names also claim unpaid minimum wage compensation.

Ahlen, Dorothy*
Alband, W.
Anderson, Steve
Apfel, Helen*
Aschke, Walter

Baade, Stella*
Bahreski, Elinor*
Barg, Raymond
Bartle, Eileen*
Baxter, Arthur
Beach, Beatrice*
Bedlawski, Helen*
Bell, Violette*
Bingle, Sherman
Bliemeister, Howard
Boeling, Barbara*
Botkins, Merle
Bousson, Julia*
Boyer, Gertrude*
Brede, Berniece*
Brede, Evelyn Mae*
Brondt, Walter
Browne, James
Bruder, Molly*
Bruder, Ruth*
Brussian, Joyce*
Burgess, Clarence

Campau, Elizabeth*
Campbell, Margaret Green*
Chattron, Harold
Clay, Wells
Collin, Louis
Collins, Shirley*
Conners, Emerson
Contri, Ella*
Copeland, Curtis
Cottrell, Claude
Crewe, Susie*
Crombes, Evelyn*
Cronk, Louise*
Cross, Gertrude*
Cumeralto, Martha*

Dacko, Nick
Dailneautf, Arthur
Daniels, Helen*
Daniels, Robert
DeBussehere, Leora*
DeKieve, Lia*
DeSchepper, Leo
Dekiere, Margaret*

Denisink, Olga*
Duboy, Clair
Dupont, Marcel*

Eckert, Arthur
Ehrle, George
Elgert, Elsie*
Engelbrecht, Marjory*
Eowhy, Mary*
Eschenburg, Edna*

Felong, John
Fetty, Marion*
Fobbe, Pauliene*
Fox, Shirley*
Frazho, Paul
Freddle, Eva*

Glonoes, Ernest
Godin, Frances*
Goffke, Dorothy*
Gohl, Hilda*
Goldenbogen, Agnes*
Goldenbogen, Lavina*
Goldenberger, Marvin
Gombert, Robert
Gooley, Ruth*
Goreia, Pat
Gottschalk, Ruth*
Graham, Elsie*
Gutt, Helen*

Haare, Floyd
Harms, Emma*
Harms, Gladys*
Harms, Viola*
Haus, Helen*
Hawcroft, Samuel
Heisner, Andrew
Hicks, Elmira*
Hicks, Robert
Hildinger, Bertha*
Hildinger, Evelyn*
Hotchkiss, Gerald
Hourtienne, Esther*
Houthoofd, George
Houthoofd, Gerome
Hoy, Olive*

Jackman, Louise*
Jackson, Bob
Jackson, Lorraine*
Jackson, Ruth*
Jakubiak, Wanda*
Jankowski, Kourt
Jorgensen, Kenneth
Jurek, Stella*

Kaiser, Paul
Kandt, David
Kandt, Marian*
Kanekowski, Marie*
Kanten, Henry
Kempff, Dorothy*
Kenney, Edith*
Kethe, Norma*
Kleinhaus, Florence*
Kotzke, LaVerne*
Krohn, Virginia*
Kudla, Antoinette*
Kudla, Julia*
Kukuk, Martin
Kulman, Katherine*
Kuzdzol, Helen*

LaForest, Ethel Socia*
Larimer, Earl
Liebzeit, George
Liebzeit, Clarence

Logghe, Margaret*
Lozon, Harry
Lozon, Martha*
Luchtman, Nelson
Ludeman, Louis
Luenknegt, Marie*
Lulay, Virginia*

Mallast, Jennie*
Manchik, Agnes*
Marleau, Elizabeth*
Masters, Clayton
Masters, Earl C.
May, Catherine*
May, Dorothy*
May, Harry
Mayobb, Twila*
McVicar, Donald
Meier, Albert
Metz, John
Meyers, Viola*
Miller, Lawrence
Miller, Marie*
Miller, Theodore

Neal, Olga*
Nicka, Carl
Nicks, Edna*
Noe, Esther*

Olewnicki, Geneive*
Olewnicki, Janet*
Osborne, James D.
Osterman, Katherine*

Pabo, Chester
Parrott, Ruth*
Pearl, Floyd
Pearl, Fred V.
Pearl, Harold
Pearl, Marie*
Persinger, Thomas
Peters, Martha*
Petrucc, Anthony
Phillips, Dutch
Phillips, Mary*
Pierzina, Eva*
Poleniewicz, Alfred
Pretzer, Arthur
Pretzer, Lucille*

Rachow, John
Rauschelback, Adelia*
Redlowski, Wilma*
Reeder, Stanley
Reeder, Wesley
Rettig, Ann*
Richard, Elaine*
Ritter, John
Rohrbeck, Luella*
Rondo, Ruth*
Rozanski, Mary*

Sabatiri, Rita*
Sahr, Emma Elgert*
Sahrow, Elmer
Sawicki, Mary*
Scheible, Edna*
Scheible, Mary*
Schiappocasse, Albert
Schluessler, Marion*
Schoof, Carl
Schramm, Beatrice*
Schroeder, George E.
Schroeder, Leona*
Schroeder, Shirley*
Schuetzler, Florence*
Schulte, Rita*
Schuster, Josephine*

Schwartz, Clarence
Selk, Walter
Sibbe, Arthur
Sievert, Carl
Smith, Preston
Snyder, Kay*
Socia, Lillian*
Sonntag, Esther*
Sopha, Bernhardt
Sopha, Esther*
Spicer, Verlon
Stafford, Glen
Stafford, Leo A.
Stanke, Alma*
Stark, B.
Starkey, Ilene*
Starkey, Paul
Suer, Edwin E.
Suttors, Frank

Teasmer, Tom
Tehl, Adam
Teise, Elsie*
Tewksbury, Jean*
Tholl, Louis
Tholl, Walter
Thomas, Albert
Thurman, Louis
Thurman, Viola*
Topikor, Elizabeth*
Trombley, Earl
Trombley, Ray

Uhlrich, Eleanora Nicka*
Ulman, Emerson

Van Rosenberg, Mable*
Vertin, Kathryn*

Watkins, Albert
Watkins, Francis*
Weier, Delia*
Weier, Edien
Weiner, Dorothy*
Weiner, John
Wendt, William
Wilder, Robert
Wolzinge, Walter

Yochum, Margaret*
Young, Burnetta*

Zaberuka, Kinnie
Zieman, Lorraine*
Zieman, Margaret*
Zienert, Mildred*
Zyshski, Leona*

## MOTION FOR JUDGMENT AND FOR APPOINTMENT OF SPECIAL MASTER

(Filed Dec. 2, 1941)

Now comes the plaintiffs by Edward Lamb, their attorney, and moves (1) that judgment be granted plaintiffs herein because of the failure of the defendant, The Mt. Clemens Pottery Company, to comply with the order of this Court heretofore entered as to the answering of the interrogatories attached to the complaint herein, and (2) that the Court appoint a Special Master to compute the sums owing each of said plaintiffs herein, and (3) that the Court make such further orders as it deems just.

This Motion is based upon the provisions of the Rules of Civil Procedure and more particularly upon Rule 37(d) providing "that where a party failed to answer interrogatories submitted under Rule 33, the Court on motion and notice may * * * enter a judgment by default against that party.

Plaintiffs to support said motion for judgment herein state the following facts and circumstances:

(A) On May 2, 1941, defendant, The Mt. Clemens Pottery Company, filed extensive objections to the interrogatories attached to plaintiffs' complaint. Copy of these interrogatories had theretofore, to-wit: on April 22, 1941, been served on the defendant, The Mt. Clemens Pottery Company. On May 12, 1941, the question of the propriety of these interrogatories was argued before the Honorable Frank A. Picard, Judge of the United States District Court for the Eastern District of Michigan,

Southern Division. Thereafter, to-wit: On or about June 13, 1941, the objections of the defendant; The Mt. Clemens Pottery Company, to the interrogatories as aforesaid were denied by the Honorable Frank A. Picard, United States District Judge. No answer to the interrogatories have been filed and no effort expended by the defendant, The Mt. Clemens Pottery Company, to comply with the orders of this Court heretofore entered as aforesaid.

The plaintiffs state that in accordance with said order of June 13, 1941, a Bill of Particulars has been furnished the defendant setting forth the information called for in said order. Thereafter, to-wit: On October 31, 1941, defendant, The Mt. Clemens Pottery Company, filed a request for further particulars and on November 10, 1941, the Court found that the list required of those employees who seek overtime had theretofore been furnished. The Court in said order of November 10, 1941, also required plaintiffs to furnish the names of those employees who claimed minimum wage compensation and also the names of the employees who claimed greater hours worked than those shown on the time cards. In accordance with said order, plaintiffs filed an Amendment to the Bill of Particulars on November 26, 1941, setting forth said information.

(B) Plaintiffs state that they diligently examined the records which were made available by the defendant company and have furnished all information required under the orders of the Court herein but that defendants have failed to answer the interrogatories attached to the complaint served upon the defendants on or about April 22, 1941. That in accordance with the rules of this Court, as more fully set forth above, plaintiffs respectfully ask that judgment by default be entered against the defendant, The Mt. Clemens Pottery Company.

(C) Plaintiffs state that in the event judgment is entered against the defendant, The Mt. Clemens Pottery

Company, in accordance with the prayer aforesaid, that various sums of money will be owing by the Mt. Clemens Pottery Company to each of the plaintiffs represented herein and request is therefore made that a Special Master be appointed to represent the Court herein and to compute the amounts owing each of said parties.

Plaintiffs state that there are in excess of 260 employees who have monies accruing to them as aforesaid and that an accountant or other persons qualified to compute said sums would assist in making the tabulations required.

In the event that judgment by default is not granted plaintiffs herein, that a Special Master, qualified to make the computations herein, would save the Court extensive labor, expedite the examinations required and bring about a speedier termination of the issues herein.

Wherefore, plaintiffs move for judgment herein in accordance with the rules of Civil Procedure as outlined above and that a Special Master be appointed herein to compute the sums owing each of the parties represented by plaintiffs herein.

Edward Lamb,
Attorney for Plaintiffs,
1014 Edison Building,
Toledo, Ohio.

## MOTION OF DEFENDANT MT. CLEMENS POTTERY COMPANY TO STRIKE OR FOR FURTHER PARTICULARS

(Filed December 6, 1941)

Comes now Mt. Clemens Pottery Company, one of the defendants in the above entitled cause, by its attorneys, and moves the court for the granting of certain orders relating to the pleadings herein, in the particulars hereinafter specified, and as summarized on the concluding page of this motion.

### I. PARTICULARS AS TO CLAIM THAT SUB-MINIMUM WAGES WERE PAID.

This defendant moves that plaintiffs be required to furnish further particulars as to their claim that certain of the plaintiffs received sub-minimum wages; and that, if such particulars be not furnished within the time specified by the Court, this claim be stricken from plaintiffs' pleadings. In this connection, defendant shows unto the Court as follows:

1. In the complaint, it was charged (paragraph 6) that

> "certain of defendant's employees in whose behalf this action is brought by plaintiffs herein did not, either on a piece work or upon an hourly rate computation, earn the minimum wage of 30c an hour."

2. This Court's order of June 13, 1941, provided, in part:

> "Plaintiffs are therefore ordered to prepare a bill of particulars showing * * * whom they claim fall

within each specific division, such as * * * 'sub-minimum' wages."

3. After counsel for plaintiffs had examined the defendant's books and records (pursuant to the Court's order of June 13th which provided that in lieu of answering certain interrogatories addressed to the defendant concerning hours worked and wages paid to all its employees, defendant should produce for plaintiffs' examination defendant's records as to the hours worked and wages paid to those employees only who designated plaintiffs as their representatives), a bill of particulars was served on defendant October 23, 1941, in which it was stated—

> "Plaintiffs on information and belief allege the fact to be that female employees listed in said Exhibit 'A'" (comprising a list of all those represented in this action) "received 'sub-minimum' wages."

4. On the hearing of defendant's motion for further particulars as to this, counsel for plaintiffs stated in open court on November 10, 1941, that the claim for sub-minimum wages would be waived; but when a proposed order was submitted for entry, counsel for plaintiffs stated he was not authorized to waive this claim, and thereupon it was provided in this Court's order of November 10, 1941, "Plaintiffs shall furnish the names of employees who claim minimum wage compensation."

5. After further examination of defendant's records, plaintiffs on November 27, 1941, served on defendant an amendment to the bill of particulars. In this document it is averred that each woman employee represented by plaintiffs claims minimum wage compensation.

6. The records of this defendant, examined by plaintiffs' counsel, clearly show that all employees except be-

ginners received wages substantially above the minimum, and that all beginners received at least the minimum, and that nearly all the women employees earned wages far above the minimum provided by law.

7. The said bill of particulars and the amendment thereto constitute a plain evasion of this Court's order. They purport to designate as earning less than 30¢ an hour women employees who earned forty to sixty cents an hour, or upwards. However, no particulars are given in support of the preposterous theory that women earning fifty or sixty cents an hour are entitled to damages because of a hypothetical failure to earn thirty cents an hour. Unless such particulars are furnished, this claim should be stricken.

## II. PARTICULARS AS TO CLAIM THAT LONGER HOURS WERE WORKED THAN SHOWN ON CLOCK CARDS.

This defendant moves that plaintiffs be required to furnish further particulars of their new claim, presented for the first time in the amendment to the bill of particulars, that all the employees represented by plaintiffs worked longer hours than shown on their time clock cards; and that if such particulars be not furnished within the time ordered by the Court, such claim be stricken from plaintiffs' pleadings. In this connection, defendant shows unto the Court:

1. In the complaint herein, it was charged (paragraph 7) that certain employees were defrauded through the use of "doctored" time clocks which did not correctly register the time at which they were punched, and that such employees started work earlier and quit later than the time shown on their clock cards, the complaint averring that:

"employees work 14 minutes in advance of the time shown on the time clocks in the morning of each working day. That the time clocks maintained by the defendant company indicate that the employees stop working for a lunch period at 11:45 A.M., whereas in truth and in fact each employee of the defendant herein is required to continue working until 11:55 A.M. That thereafter the time clock indicates that each employee of the defendant company herein resumes work at 12:45 P.M., whereas in truth and in fact each employee of the defendant company herein resumes work at 12:31 P.M. That the time clocks maintained by the defendant company indicate that the employees stop work in the afternoon at 4:15 P.M., whereas in truth and in fact each employee of the defendant works until 4:30 P.M."

2. After an examination of defendant's records disclosed the incorrectness of this charge, plaintiffs failed to specify in their bill of particulars the names of any individuals claimed to fall within this category, despite the requirements of this Court's order of June 13, 1941.

3. At the hearing on defendant's motion for further particulars on November 10, 1941, it was stated in the course of the arguments that plaintiffs' claims were based on the defendant's clock card records as to hours worked, but this concession was later withdrawn and accordingly, it was provided in this Court's order of November 10, 1941, that plaintiffs should furnish the names of those employees who claimed they worked greater hours than those shown on the time cards.

4. In the amendment to the bill of particulars served on defendant November 27, 1941, it is claimed for the first time that all employees represented by plaintiffs

worked longer hours than shown on their time cards. This is not a particularization of the original claim that the time clocks were "doctored" so as to show incorrectly identical starting and stopping times for all employees. Rather, after an examination of the defendant's records demonstrated the incorrectness of this original claim, it has been abandoned, and there is substituted in lieu thereof a new and exceedingly vague charge that all the employees represented herein worked greater hours than shown on their time cards. It is not averred, however, how much extra time is claimed, or when it accrued, or how it is to be measured, nor are any particulars given as to the nature of this claim. This defendant shows that information as to such particulars will be required to enable defendant properly to prepare its responsive pleading and to prepare for trial, and moves that unless such particulars be furnished, this claim be stricken.

## III. PARTICULARS AS TO OTHER NEW CLAIMS.

This defendant further moves that plaintiffs be required to furnish particulars as to the nature of the following new claims, which are set forth in the amendment to the bill of particulars, but without proper particularity as to the names of the employees on whose behalf the claims are made, nor as to the real nature of the claims, nor when they accrued, nor how much is involved:

1. The general claim is made that plaintiffs were required to perform certain uncompensated tasks, such as oiling machinery; but no particulars are given concerning this claim, nor is it averred whether or not plaintiffs claim that such work was done outside of the hours recorded on the clock cards, and defendant cannot properly

prepare its defense without knowing the nature of plaintiffs' claims in these particulars.

2. The general claim is presented that the defendant made certain unauthorized deductions from the wages of plaintiffs, or some of them, again without particularizing whether or not they claim any other deductions than those which are duly reflected on the defendant's records, examined by plaintiffs; and without particulars as to whether they claim that the deductions were not in fact assented to by employees or that the employees could not lawfully assent to an arrangement whereby gloves and similar articles purchased by the employees through the company would be paid for by deductions from their gross pay. The bill of particulars avers that deductions were made for hand trucks used by the employees, a claim which defendant charges to be malicious and untrue and which is not supported by defendant's records; and defendant avers that if plaintiffs in fact intend to press any such charges they should be particularized.

3. Another vague charge is made that where a group of two or more employees were paid on a group piece work basis, deductions were made from the group's piece work earnings to pay wages of third persons claimed to have helped on the job. The impropriety of this does not appear. If particulars as to time and names are given, defendant can establish by its records what third person helped on the job, and what part of the group's total earnings, if any, were paid to him; but without such particulars defendant can have no knowledge of what real claim, if any, is made in this connection.

4. Similarly, particulars should be given as to the names of the employees whose foremen are alleged to have punched out their clock cards before the employees quit work, and when these instances are claimed to have occurred.

## IV. VAGUENESS OF AMENDED BILL OF PARTICULARS.

This defendant avers that there is involved herein only one real claim, i.e., a claim that certain employees performed work for intervals ranging from one to fourteen minutes between the established starting or stopping time and the time when the employees punched the time clock, and that these intervals were not included in the company's computation of hours worked, and that if included in such computation the result would be in certain cases to increase the employee's total hours during a week so as to come within the bracket where it is claimed time and a half must be paid (the number of hours worked by piece-rate employees herein becoming important, if at all, only where overtime is involved). As to this claim, well defined issues of fact and law will be presented by defendant's answer. As to the additional vague charges made by hints and innuendo in plaintiffs' complaint, bill of particulars, and amended bill of particulars, defendant respectfully submits that the obscurity is purposeful, and that a requirement of further particulars will, by forcing a definite statement as to these claims, properly narrow the issues and conserve the Court's time, and enable defendant properly to prepare for trial. In this connection defendant shows unto the Court:

1. Subdivision II A of the Amendment to the Bill of Particulars charges that time worked should be computed from the precise moment the employee entered the plant and punched the time clock, whether or not he then began work, and charges that defendant erred in computing hours worked without counting all of these odd minutes. However, in 5 of the 6 examples given, the figure stated as claimed "actual time worked" is in excess

of the total elapsed time shown on the clock cards, although this is the basis plaintiffs purport to adopt. There is no explanation of the basis for computing the claimed "actual time worked." This defendant moves for particulars as to this.

Further, out of four examples showing claimed "actual time worked" for a period of two weeks, there are two cases where even the claimed "actual time worked" does not involve overtime. So long, at least, as the claimed hours worked are not in the overtime bracket, the precise number of hours worked is immaterial, where, as here, employees are paid piece rates. Defendant therefore moves for a more definite statement as to what plaintiffs claim for this.

2. Subdivision II F of the Amendment to the Bill of Particulars avers that employees were charged with taking 30 minutes time off for lunch when in fact they did not do so; but the particular instances alleged are not supported, as plaintiffs claim, by the defendant's records. On the contrary, the records referred to (which have been examined by plaintiffs' counsel) do not support the claim. Plainly, the nature of this claim should be particularized.

3. Subdivision II H of the Amendment to the Bill of Particulars alleges that in certain instances employees were paid straight time for overtime work. Certain instances are pointed out, involving, however, employees paid at piece rates and not at hourly rates. Further, two instances are given of alleged overtime hours worked in a work week, whereas, in fact, as shown by defendant's records, the hours were spread over a longer period; two instances are given as to hours worked in a "period," which as shown by defendant's records involved two full work weeks and part of a third, so that the total as given

is insignificant; and two instances are given of hours worked in a "period" which is shown by defendant's records to be a two week period, with no overtime in either week.

4. Subdivision II J makes allegations as to the uniformity of recordings on certain clock cards. However, the cards do not in fact contain the figures which it is said they contain. Further, there is no statement of any kind on which it is possible for the defendants to learn what, if anything, is claimed on the basis of the assertion that certain employees punched the time clocks at approximately the same time on successive days.

5. Similar inconsistencies occur in other paragraphs of the Amendment to the Bill of Particulars, as more fully will appear upon examination thereof.

## V. PRIOR ORDER NOT COMPLIED WITH.

Although this Court's order of June 13, 1941 required the plaintiffs to list the individuals claimed to fall within each of the specific divisions set up in the complaint, nevertheless plaintiffs have not, either in their Bill of Particulars or in the amendment thereto, specified any individuals claimed to fall within the following classifications:

1. Employees from whose pay the defendant is claimed to have deducted the sum of 10% (Paragraph 6).

2. Employees claimed to have been shifted from one job to another at a continuation of a "beginner's rate of pay" (Paragraph 6).

3. Employees signing blank vouchers claimed to have been subsequently filled in to show hours worked and wages paid (Paragraph 8).

4. Employees claimed to have worked 45 hours each week without extra compensation for overtime hours (Paragraph 4 and 5).

5. Employees claimed to have been required to punch time clocks which did not correctly register the time at which they were punched.

## VI. SUMMARY.

Wherefore, this defendant moves the Court as follows:

1. That plaintiffs be required to give further particulars as to the claim for sub-minimum wages, in view of the fact that no basis whatever is suggested for the claim that women employees earning 40¢ to 60¢ an hour or upwards are claimed to have earned less than 30¢ an hour; and that if such particulars be not furnished, this claim be stricken.

2. That plaintiffs be required to furnish further particulars of their new claim that they worked longer hours than shown on their time clock cards, in view of the fact that nothing whatever is stated as to the real nature of this claim, or as to how much extra time is claimed, or on what basis it is to be computed; and that if such particulars be not furnished, this claim be stricken.

3. That plaintiffs be required to furnish particulars as to the nature of the following new claims set up in the amendment to the Bill of Particulars, specifying in each case the names of the individuals claimed to be involved, and the basis of the claims: (a) that certain uncompensated work was performed; (b) that unauthorized deductions were made from wages; (c) that group piece-work

earnings were improperly allocated; (d) that foremen improperly punched certain employees' clock cards. And defendant moves that if such particulars be not furnished, this claim be stricken.

4. That plaintiffs be required to particularize and explain the self-contradictory and patently erroneous statements set forth in the amendment to the bill of particulars, in the respects hereinabove specified; and that if this be not done, the amended Bill of Particulars be stricken as being impertinent, immaterial, and scandalous.

5. That there be stricken those allegations of the complaint, as hereinabove specified, as to which this Court's prior order requiring the furnishing of particulars has not been complied with.

6. That this defendant may have such other and further relief as the Court deems proper.

This motion is based on the files and records of this case, and on the court rules in such case made and provided.

Beaumont, Smith & Harris,
Albert E. Meder,
Frank E. Cooper,
Attorneys for Defendant,
Mt. Clemens Pottery Company,
2900 Union Guardian Building,
Detroit, Michigan.

December 6, 1941.

## ANSWER OF MT. CLEMENS POTTERY COMPANY TO MOTION FOR JUDGMENT AND FOR APPOINTMENT OF SPECIAL MASTER

(Filed Dec. 12, 1941)

Now comes the Mt. Clemens Pottery Company, one of the defendants in the above entitled cause, by Beaumont, Smith & Harris, its attorneys, and in answer to the motion heretofore filed by plaintiffs herein seeking entry of a judgment in favor of the plaintiffs and seeking the appointment of a Special Master to compute the sums owing to plaintiffs, shows unto the Court as follows:

A. Answering Paragraph A of said motion, this defendant refers to the files and records of this Court as to the dates of service of the pleadings herein and as to the dates of hearings. This defendant denies that on or about June 13, 1941, the objections of this defendant to the interrogatories were denied, and shows that, on the contrary, said objections were sustained, and that the order of June 13 provided that in lieu of answering the said so-called "interrogatories" this defendant should produce certain records (showing a part, but not all, of the information requested in said interrogatories) and permit inspection by plaintiffs of those records specified in the Court's order; and this defendant has complied fully with this order. Further answering, this defendant denies that the Bill of Particulars filed by plaintiffs sets forth the information called for in said order of June 13, 1941, and denies that the plaintiffs' amendment to the Bill of Particulars sets forth the information called for in the Court's order of November 10, requiring the furnishing of further particulars.

B. Answering Paragraph B, this defendant denies that plaintiffs diligently examined the records showing hours worked and wages paid employees claimed to be represented by plaintiffs; and denies that plaintiffs have furnished the information required under the orders of the Court herein; and denies that this defendant has failed in any respect to comply with the orders of the Court.

C. Answering Paragraph C, this defendant denies that any sums of money are owing to any of this defendant's employees herein and denies that an accountant could assist the Court. This defendant denies that a Special Master would save the Court extensive labor or expedite the examinations required or bring about a speedier determination of the issues. On the contrary, this defendant shows that at least until issues are framed through the filing of an answer and affirmative defenses by this defendant and through the Court's ruling thereon, appointment of any special master would be unwarranted by any rule of Court and would serve only to delay and hinder a proper framing of the issues herein.

Beaumont, Smith & Harris,
Albert E. Meder,
Frank E. Cooper,
Attorneys for Defendant,
Mt. Clemens Pottery Company,
2900 Union Guardian Building,
Detroit, Michigan.

December 12, 1941.

## AFFIDAVIT

State of Michigan,
County of Macomb—ss.

CHARLES E. DOLL, being first duly sworn, deposes and says that he is a resident of the City of Mt. Clemens, Macomb County, Michigan, and is the Vice-President and General Manager of the Mt. Clemens Pottery Company, one of the defendants in the above entitled cause.

Deponent further says that the Mt. Clemens Pottery Company maintains three sets of records showing the hours worked and wages paid its employees, viz: (1) time clock cards showing the hour and minute that each employee registers his entrance to or exit from the plant and showing further the computation of the number of hours worked each day; (2) an intermediate posting record showing the weekly earnings of each employee for each bi-weekly pay period and showing the hours worked each week; (3) annual individual earnings records for each employee, duplicating a portion of the information contained in the above described records and showing the hours worked and wages earned by each employee during each pay period of a year. For further explanation, copies of typical records are attached hereto and marked "Exhibits A, B and C."

Deponent further says that prior to September 19, 1941, he caused to be placed in the offices of Beaumont, Smith & Harris, attorneys, at 2900 Union Guardian Building, Detroit, Michigan, and there made available for examination by plaintiffs' attorney all of the intermediate posting records showing the hours worked and the wages paid all employees of the Mt. Clemens Pottery Company (and particularly those represented in this action) for the period

from September 20, 1938, to April 1, 1941; and the annual earnings cards of said employees for the years 1938, 1939 and 1940; and the time clock cards of said employees for the period from November 14, 1939, to December 31, 1940, and that said records have so remained available at all times for plaintiffs' inspection.

Deponent further says that on or about November 18, 1941, request therefor having been made by plaintiffs' attorney, he caused to be likewise placed in the offices of Beaumont, Smith & Harris and made available for examination at any time the clock cards of said employees for the period of January 1-April 22, 1941, and also the intermediate posting records showing hours worked and wages paid for the period from April 1-April 22, 1941, and that said records have at all times remained so available for inspection by plaintiffs' representatives.

Deponent further says that the only records in existence pertaining to the hours worked and wages paid said employees from September, 1938, through April, 1941, and not so removed to Detroit for the convenience of plaintiffs' counsel are the individual earnings cards for the period subsequent to January 1, 1941. As to these records, deponent says that the information as to hours worked and wages earned contained therein is also found in the original records from which the data on these individual earnings cards are copied (which original records, as above set forth, have long since been and still are constantly available for plaintiffs' examination in Detroit). Deponent further says that the only reason these individual earnings cards have not been so placed with the other records in Detroit is that they are in current use in the offices of The Mt. Clemens Pottery Company. Deponent further says that he has offered to have these cards brought to Detroit on any Monday, Tuesday or Friday afternoon or any Saturday morning for inspection by plaintiffs' representatives (the cards being unavailable on

Wednesdays and Thursdays, inasmuch as on those days entries are made thereon) and that deponent had completed preparations for the delivery of these cards to Detroit for examination by plaintiffs' attorney on December 5, 1941, pursuant to an appointment which was, however, on December 4, 1941, cancelled by plaintiffs' attorney, and deponent further says that he remains ready and willing to produce these records (which duplicate the information on records already offered plaintiffs' attorney for examination) on any day when said cards are not in actual use in the posting machines in the offices of the Company.

Deponent further says that the time clock cards for the period prior to November 15, 1939, were destroyed in the regular course of business hitherto and long prior to the institution of this action but that the information as to hours worked and wages paid employees of The Mt. Clemens Pottery Company for the period from September, 1938, to the date of the filing of the complaint herein remains available in other records which have hitherto been supplied plaintiffs for their examination, as above set forth.

Deponent further says that he is advised by counsel and verily believes that The Mt. Clemens Pottery Company has fully and in all respects complied with the orders of this Court of June 13 and November 10, 1941.

Further deponent says not.

(sgd.) Chas. E. Doll.

Subscribed and sworn to before me
this 11th day of December, 1941.

Agnes E. Benbennick,
Notary Public, Macomb County, Mich.
My commission expires Feb. 21, 1943.

(Attached exhibits omitted from printed record.)

## AFFIDAVIT

State of Michigan,
County of Wayne—ss.

JAMES I. MacKENZIE, being first duly sworn, deposes and says that he is employed by Price, Waterhouse & Co., certified public accountants, and that in their behalf he has for four years audited the books of The Mt. Clemens Pottery Company, one of the defendants in the above entitled cause, and is familiar with the records of said company showing hours worked and wages paid to its employees. Deponent further says he has been engaged by The Mt. Clemens Pottery Company to assist representatives of plaintiffs in the above action in their examination of the books and records of said company showing hours worked and wages paid to those employees who are represented in the above entitled action.

Deponent further says that at all periods subsequent to September 19, 1941, there have been constantly available for plaintiffs' inspection in Detroit, Michigan, the records of the Mt. Clemens Pottery Company showing hours worked and wages paid to its employees for all periods between September 20, 1938 and January 1, 1941. Deponent further says that at all times subsequent to November 18, 1941, there have likewise been available in Detroit the clock cards and intermediate posting records showing hours worked and wages paid said employees for the period from January 1 to April 22, 1941.

Deponent further says that he assisted one or more representatives of the plaintiffs in an examination of such books and records on the 19th, 22nd, 23rd, 24th and 26th days of September, 1941, according to entries in deponent's work records, and that on October 13 and October

14 he waited for plaintiffs' representatives to keep an engagement for further examination of such books and records, but that plaintiffs' representatives appeared on neither of said days. Deponent further says that the examination was renewed by plaintiffs' representatives on November 17, 18, 19 and 21.

Deponent further says that on November 22, 24, 25, 26, 27, 28 and 29 and on numerous days in December, deponent has sorted and arranged the records aforesaid pursuant to the request of plaintiffs' attorney and that said records remain available for further inspection.

Deponent further says that during the examination of the records made in September on the dates aforesaid, deponent found each particular record for which a request was made without loss of time.

Deponent further says that on November 17th and 18th, 1941, he segregated for the assistance of plaintiffs some 394 records as called for by plaintiffs' representatives, comprising 172 time clock cards, 197 entries in the intermediate posting books, and 25 annual earnings cards; and that at all times subsequent to November 18 there have been segregated and awaiting the inspection of plaintiffs a large number of records of the employees represented in the above entitled action, but the said records have remained unexamined by plaintiffs. Further deponent says not.

(sgd.) James I. MacKenzie.

Subscribed and sworn to before me
this 12th day of December, 1941.

(sgd.) Sophia S. Fillipps,
Notary Public, Wayne County, Mich.
My commission expires Oct. 1, 1945.

## AFFIDAVIT

State of Michigan,
County of Wayne—ss.

FRANK E. COOPER, being first duly sworn, deposes and says that he is an attorney at law associated with Beaumont, Smith & Harris, attorneys for the defendant Mt. Clemens Pottery Company in the above entitled cause, and that deponent is particularly familiar with the proceedings had in said cause.

Deponent further states that a list of certain individuals claimed to be represented by plaintiffs herein was received by deponent on or about July 8, 1941; and that, after certain correspondence and telephone conversations, a meeting was held on or about September 4, 1941, between counsel for plaintiffs and counsel for The Mt. Clemens Pottery Company, to complete details for an examination by plaintiffs of the books and records of The Mt. Clemens Pottery Company, pursuant to this Court's order of June 13, 1941; and at said meeting, no demand was made for an answer to the "interrogatories" attached to plaintiffs' complaint, although the so-called "interrogatories" were, like the examination, directed to a determination of hours worked by, and wages paid to, certain employees of The Mt. Clemens Pottery Company.

Deponent further says that in a letter under date of November 3, 1941, addressed to Hon. Frank A. Picard (a copy of said letter having been received by deponent) counsel for plaintiffs stated in part:

> "Although we understood the Court's ruling of June 13th to require The Mt. Clemens Pottery Company to answer our interrogatories, we are in-

formed that the defendants have never filed the same. We would like to reserve the privilege, therefore, of having the Court pass upon the necessity of the defendants answering these interrogatories at the hearing Monday morning, November 10, 1941."

Deponent further says that on the hearing held November 10, 1941, on the motion of The Mt. Clemens Pottery Company for further particulars, counsel for plaintiffs did ask the Court to pass on the necessity of the defendant answering the "interrogatories," and the Court after examining the said "interrogatories" and hearing arguments of counsel announced that there would be required only the production for examination of a portion of those records, the tabulation of which was requested in said "interrogatories," and this is duly provided for in the Court's order of November 10, 1941; and, as appears from the other affidavits hereunto annexed, this order has been fully complied with.

Further deponent says not.

Frank E. Cooper.

Subscribed and sworn to before me
this 12th day of December, 1941.

(sgd.) Sophia S. Fillipps,
Notary Public, Wayne County, Mich.
My commission expires Oct. 1, 1945.

[SEAL]

## ORDER

(Filed December 15, 1941)

At a session of said Court held in the Federal Building, in the City of Detroit, Michigan, on the 15th day of December, 1941.

Present: Hon. Frank A. Picard, District Judge.

The above matter having come on to be heard upon motion of plaintiffs for entry of judgment against The Mt. Clemens Pottery Company and for appointment of a Master, and counsel being heard and the Court being fully advised in the premises, it is hereby

Ordered that the said motion for judgment be and is hereby denied.

Frank A. Picard,
District Judge.

## ANSWER OF MT. CLEMENS POTTERY COMPANY AND MOTIONS TO DISMISS AND STRIKE

(Filed Jan. 2, 1942)

Now comes The Mt. Clemens Pottery Company, one of the defendants in the above entitled cause, by its attorneys, and saving and reserving unto itself all manner of benefit of exception to the many inaccuracies and imperpections in the complaint contained, and saving and reserving unto itself all manner of benefit of its motion to dismiss said complaint, which is attached to this, its answer thereto, says:

Answering the introductory and unnumbered paragraph of the complaint, this defendant admits that each of the named individual plaintiffs is an employee or former employee of The Mt. Clemens Pottery Company, and that the Pottery Company is a Michigan corporation doing business at Mt. Clemens, Michigan, and that Charles E. Doll, Sr., is Vice-President and General Manager of said company, and in this connection this defendant shows unto the Court that it has carried on business upwards of 25 years and that at no time during all this period has it been engaged in any wage dispute with its employees but on the contrary it had paid its employees wages above the prevailing scale in the industry, and this defendant shows that although plaintiff Local 1083, United Pottery Workers of America, affiliated with the C.I.O., has called two strikes at this defendant's plant within the last ten months, neither strike was based on demands as to wages or hours. Further answering, this defendant admits that the defendant, S. S. Kresge Company, a Michigan corporation, claims a substantial owner-

ship of the stock of said Mt. Clemens Pottery Company, but this defendant denies that said S. S. Kresge Company acts as an employer of the employees of the Mt. Clemens Pottery Company or supervises the policies and affairs of the Mt. Clemens Pottery Company and denies that the plaintiffs or any of them do or can sue for any unnamed employees. This defendant denies all of the allegations of said paragraph not herein expressly admitted.

1. Answering paragraph 1 of the complaint, this defendant denies that this action can properly be brought by the named plaintiffs, or any of them, under Section 16(b) of the Fair Labor Standards Act and further denies that it can be brought for or on behalf of other employees alleged to be similarly situated or any employees other than the named individual plaintiffs. This defendant for lack of information sufficient to form a belief neither admits nor denies that the United Pottery Workers of America is an unincorporated trade association affiliated with the Congress of Industrial Organizations or that Local 1083 thereof has a majority of its members among the employees of The Mt. Clemens Pottery Company. This defendant denies that all the individuals whose names appear on the so-called "Designation" heretofore filed herein have designated Local 1083 as their representative or as representative of its members to bring this action, and for lack of information sufficient to form a belief neither admits nor denies whether any of said members have so designated the Union, but shows that said Union cannot lawfully be designated as representative to maintain an action for employees under the Fair Labor Standards Act. This defendant denies that plaintiffs have any action under the Fair Labor Standards Act of 1938 or otherwise against this defendant.

2. Answering paragraph 2, this defendant denies that it has violated the provisions of the Fair Labor Standards Act and denies that its employees are engaged in inter-

state commerce. This defendant admits that it purchases certain raw materials outside of Michigan, and that some of its finished products are sold in interstate commerce, but denies all of the other allegations in said paragraph contained.

3. There is no paragraph numbered 3 in the complaint.

4. Answering paragraph 4, this defendant denies all allegations of fact therein made, and as to the statement of the provisions of the Fair Labor Standards Act refers to the said statute.

5. Answering paragraph 5, this defendant denies the allegation of fact therein made, and as to the conclusions of law begs leave to refer to the provisions of the statute referred to.

6. Answering paragraph 6, this defendant admits that the employees claimed to be represented in this action work on a piece-work, or hourly rate basis as hereinafter set forth, and shows that all its employees have been fully paid for all work done. Further answering, this defendant denies all of the other allegations in said paragraph contained, and shows that the allegations charging that certain employees performed home work have been stricken by consent, and that no such claim is now made. This defendant further shows that the allegations that this defendant deducted the sum of 10% from the pay of new employees and changed employees from one job to another with a continuation of such deductions must be deemed stricken pursuant to counsel's statements in open court, and because of plaintiffs' failure to furnish particulars in connection with this charge in accordance with the orders of the Court heretofore made herein.

7. Answering paragraph 7, this defendant denies the allegations thereof, and shows that said allegations must be deemed stricken by consent pursuant to the admission

of counsel for plaintiffs in open court that no such claim is made, and by reason of the failure of plaintiffs to particularize the allegations in said paragraph contained pursuant to the prior orders of this Court. Further answering, this defendant shows unto the Court that its time clocks accurately reflect the precise minute at which the employees' clock cards are punched and that the company's computation as to the total hours worked by each employee for the preceding day is recorded each morning on the clock cards, and that each employee sees each day the number of hours he is credited with having worked the day before, and that none of the employees prior to the institution of this action have ever made any claim that they worked longer hours than shown on the records, computed on the basis which has been uniformly followed by this defendant for many years and which is followed, as this defendant is informed and believes, by many other companies.

8. Answering paragraph 8, this defendant denies all of the allegations therein made, except that it admits that certain employees claimed to be represented herein are employed in the clay shop, on the bisque and glost belts, in the dipping department, decorating room, packing shed, and slip off department, and that among such employees there are some who load and unload, pack, handle, ship, and process the products of this defendant.

9. Answering paragraph 9, this defendant has no knowledge as to what plaintiffs are informed. It denies all the other allegations in said paragraph, and shows that it has produced for the examination of plaintiffs all its records of hours worked and wages paid all employees claimed to be represented by plaintiffs, for the period from September 24, 1938, to the date of the filing of the complaint herein.

As to the interrogatories attached to the complaint, this defendant omits further answer to the same, pursuant to

the orders of this Court under date of June 13, 1941, November 10, 1941, and December 15, 1941.

This defendant denies that plaintiffs have suffered any damages, and prays that the complaint be dismissed with costs to it most grievously sustained.

## BILL OF PARTICULARS

Answering the Bill of Particulars heretofore filed by plaintiffs herein, this defendant shows unto the Court that the same is a mere subterfuge and gives no information whatever, and this defendant shows it should have a clear statement as to what is claimed for each employee alleged to be represented, and shows that failure so to particularize makes it impossible for this defendant properly to plead or prepare for trial, and prevents a proper narrowing of the issues and will result in unduly prolonging the trial and consuming the time of the Court. This defendant further says:

1. Answering Subdivision I, this defendant denies that overtime work was performed by the employees listed on Exhibit A thereto, without proper and lawful compensation therefor, and denies that said employees are represented by any of the plaintiffs herein, and denies all the other allegations therein.

2. Answering Subdivision II, this defendant denies that the female employees listed in Exhibit A received subminimum wages, and denies all the other allegations therein.

3. Answering Subdivision III, this defendant shows that all claims made therein have been stricken by consent of plaintiffs' counsel in open court, and denies the allegations therein contained, except that it admits on

information and belief that plaintiffs are unable to give the names of any employees performing "home work," and shows that no employees did perform "home work."

4. Answering Subdivision IV, this defendant denies that the so-called written "authorization" of the employees claimed to be represented is valid or legally effective, and denies that any of the plaintiffs may prosecute this action as representative of the employees named in the said Designation, "Exhibit A," and denies that the records of this defendant showing the hours worked by its employees are incorrect or false, and denies that they do not reveal the time worked by the employees, and denies that it has credited the employees with less than the actual time worked, and shows that it has in many cases credited employees with more than the actual time worked, and denies that the hours stamped on the time cards showing the time of entry to and exit from the plant reveal the total hours worked, and shows that this defendant's computations on the time cards credit the employees with at least all time worked, and often with longer hours than actually worked, and denies that the computation of the total hours worked has been falsified or incorrectly computed, and denies that the contents of the time cards referred to are correctly or properly set forth in said Bill of Particulars, and denies that the examples are typical of all the time cards, and denies all the allegations in said Bill of Particulars not herein expressly admitted.

## AMENDED BILL OF PARTICULARS

Answering the amendment to the Bill of Particulars, this defendant shows unto the Court that the same is a mere subterfuge and gives no information whatever, and this defendant shows it should have a clear statement as

to what is claimed for each employee alleged to be represented, and shows that failure so to particularize makes it impossible for this defendant properly to plead or prepare for trial, and prevents the proper narrowing of the issues and will result in unduly prolonging the trial and consuming the time of the Court. This defendant further says:

1. Answering Subdivision I, this defendant denies that any of the employees whose names appear on Exhibit B are entitled to minimum wage compensation, and denies that any of them worked greater hours than those shown on the time cards or other records of The Mt. Clemens Pottery Company, and denies all the other allegations therein.

2 (A). Answering Subdivision II (A), this defendant shows that its employees are not permitted to check into the plant more than 14 minutes before their established times for starting work and that an employee who checks in before the established starting time is prohibited from commencing work before the established starting time and is given credit for commencing work at the established starting time, whether he does or not, and that an employee checking into the plant after his regular starting time commences work at the succeeding quarter hour and is so credited; and that an employee is given up to 14 minutes after the close of work to check out of the plant, and that if he does not do so, he is credited with additional working time. This defendant further shows that where an employee punches the time clock before starting work or after quitting work this defendant does not compensate such employee for periods he was in the plant but not working prior to the start of work or subsequent to the close of work, and further shows that the examples set forth in said paragraph do not correctly reflect the actual records which they purport to copy, and denies all the allegations therein not expressly admitted.

2 (B). Answering Subdivision II (B), this defendant denies the allegations therein contained, and shows that the examples set forth therein do not correctly state the contents of this defendant's records.

2 (C). Answering Subdivision II (C), this defendant denies the allegations of fact therein contained. As to the examples given, this defendant begs leave to refer to the original records, when properly produced and proven, for a correct statement of the contents thereof.

2 (D). Answering Subdivision II (D), this defendant denies all the allegations thereof, and further answering, shows that the established piece work rates include compensation for all non-productive work incidental to the particular job, and shows that all time spent in non-productive work is counted as hours worked.

2 (E). Answering Subdivision II (E), this defendant denies all the allegations therein made.

2 (F). Answering Subdivision II (F), this defendant denies all the allegations therein made.

2 (G). Answering Subdivision II (G), this defendant denies all the allegations therein made.

2 (H). Answering Subdivision II (H), this defendant denies all the allegations of fact therein contained and as to the statements as to what appears on certain records, this defendant prays leave to refer to the originals of said records when the same are properly produced and proved.

2 (I). Answering Subdivision II (I), this defendant admits that if employees work in a group and are paid on a group piece work basis and if an additional employee

is temporarily added to the group and performs a part of its work a proportionate part of the group's earnings is paid to such added employee, and this defendant shows that it is required so to do under the provisions of the law, and denies all the allegations therein made not herein admitted.

2 (J). Answering Subdivision II (J), this defendant denies that the time cards of its employees were improperly marked, and shows that the examples given do not correctly reflect the company's records, as will more fully appear when said records are produced and proved, and this defendant shows that the plaintiffs have been paid properly, and in compliance with the requirements of the law, for all time worked, including overtime, and that most of them have received annually pay for two weeks in which they did no work, and denies that any practices were followed in order to prevent the plaintiffs receiving the wages and overtime compensation to which they were entitled, and denies that Exhibits A or B constitute a list of the employees who claim minimum wage compensation or who claim greater hours worked than those shown on the time cards, and denies that any of said employees have any such claims, and denies all of the other allegations in said Subdivision II (J) contained.

Wherefore, this defendant prays that the complaint be dismissed with costs to it most grievously sustained.

## DEFENSES RAISING ISSUES OF LAW AND AFFIRMATIVE DEFENSES

1. All claims of the individual plaintiffs and of the employees claimed to be represented by Local 1083 United Pottery Workers of America—C.I.O., for all periods prior to November 14, 1939, were compromised, settled, released

and made the subject of an accord and satisfaction prior to the institution of this suit and their claims, if any, must therefore be limited to periods subsequent to November 14, 1939.

2. Except in a few particular instances, the individual plaintiffs and the employees claimed to be represented by plaintiff Union were not paid for hours worked but were paid on a piece rate basis for work done, and they and each of them agreed to work on such basis of compensation, and this defendant shows that therefore the provisions of Sections 6 and 7 of the Fair Labor Standards Act of 1938 have no application to their employment except to the extent of imposing a requirement that the earnings of the employees must equal or exceed what they would have been paid if compensated on an hourly basis or other time basis at the minimum rate established by law, and this defendant shows that all of its employees earned sums at least equal to and most of them earned sums greatly in excess of the standards established by law.

3. The employment of the individual plaintiffs and all other employees claimed to be represented by Local 1083, United Pottery Workers of America—C.I.O., was pursuant to individual hiring agreements and the customary practice of this defendant, which was well known to all employees and acquiesced in by them, that all employees regardless of their piece work earnings would be paid at least the minimum rate provided by law plus time and a half for overtime and, in addition, would receive such excess sum as would make up the difference between the earnings so computed and the amount the individual was able to earn by accomplishing enough work to earn in excess of the guaranteed hourly rate. All of the plaintiffs and all other employees claimed to be represented by United Pottery Workers of America—C.I.O., received sums equal to or in excess of the established rates fixed

by statute and agreement for all hours worked, including overtime hours, on a basis of compensation which was agreed to by said employees and which is binding on them, not being in contravention of any law. The standards by which this defendant determined working time were lawful and reasonable, and represented the prevailing customs and practices in the particular industry and in other industries, and were and are supported by bona fide agreements and by practices in the industry.

4. The individual plaintiffs and likewise all other employees claimed to be represented by Local 1083, United Pottery Workers of America—C.I.O., and likewise this defendant, all relied on and jointly and severally accepted the ruling made by the Wage and Hour Division at the time of its inspection of November, 1939, under which the Wage and Hour practices of this defendant as established and followed for all periods subsequent to November 14, 1939, were in compliance with the law. By reason of the mutual acceptance of this administrative interpretation of the statute, which this defendant asserts is a correct interpretation, and by reason of this defendant's reliance on the employees' acceptance of such interpretation, and by reason of the failure of the employees to make any objection to this defendant's acceptance of such ruling for a long period of time, and by reason of the acceptance by the employees of sums hitherto paid them by this defendant as payment in full for their services, and by reason of the employees accepting without objection this defendant's computation of hours worked, made known daily to each of the employees, as above set forth, and by reason of all the circumstances of the case, the said plaintiffs and other employees are estopped from asserting their present claim that this defendant erroneously computed their hours of work and wages due them.

5. The time clock cards of the plaintiffs and all of the employees were not used to obtain a record of and in fact

do not show the hours worked by the employees and do not show the time during which employees were required to be on duty or to be on this defendant's premises or to be at a prescribed work place, but on the other hand show rather the times of entry to and exit from the plant. The employees were not permitted to enter the plant more than 14 minutes prior to their established starting time in the morning or afternoon. On entering the plant they punched time clocks but did not begin work until an established starting time and this defendant did not suffer or permit any of the employees to begin work prior to the established starting time. On the completion of the established working periods the employees ceased work and were allowed 14 minutes thereafter to clean up and leave the plant, and this defendant did not suffer or permit any of its employees to continue at work between stopping time and the time the employees punched out their time clock cards and left the plant.

6. The individual plaintiffs and the employees claimed to be represented by Local 1083, United Pottery Workers of America—C.I.O., did not remain at work continuously between their starting and stopping times but at frequent intervals took recesses of several minutes' duration, claiming and having a right to do so under their employment agreement, under which they were not paid solely for time spent on the job but rather for work done, and this defendant shows that its computation of hours worked was, if anything, as it is informed and believes, in excess of the amount of time actually worked by the employees.

7. The complaint does not show that all the plaintiffs nor the employees claimed to be represented by Local 1083, United Pottery Workers of America—C.I.O., were engaged in occupations subject to the provisions of the Fair Labor Standards Act of 1938 during each of the several weeks for which claims are asserted and therefore fails to state a claim on which relief may be granted.

8. Local 1083, United Pottery Workers of America—C.I.O., is not a proper party to maintain in its own name, or as an agent or representative of any employees of this defendant, an action for the recovery of independent and several claims of individual employees.

9. All of the employees of this defendant have been fully paid for all work done by them.

10. This defendant further shows unto the Court that the methods employed in the prosecution of this action and the acts of plaintiffs in the premises, as this defendant is informed and believes, and so charges, constitute an abuse of the Court's process; and in this connection this defendant shows that this action was filed on or about April 16, 1941, without any prior notice to or demands on this defendant, and two days after the calling of a strike by plaintiff, Local 1083, United Pottery Workers of America—C.I.O., at the plant of this defendant on April 14, 1941; and shows that the so-called amended Bill of Particulars was filed on or about November 26, 1941, and coincident with another strike, although plaintiffs had on or about November 24, 1941, as this defendant is informed, applied for and obtained an extension of time until December 15, 1941, in which to file such particulars, on the plea that additional time was required in order to enable plaintiffs to complete their examination of this defendant's records, but on the calling of another strike, an amendment to the Bill of Particulars was filed without further examination, and shortly thereafter a scandalous motion for judgment was filed, which the Court denied; and shows that some of the plaintiffs, as this defendant is informed, have instituted another action in the Courts of Ohio by attachment or garnishment proceedings, in which the same or similar claims are made, purely to vex and harass this defendant, and without justification; and shows that plaintiffs have refused to properly par-

ticularize their claims and have made claims purporting to be based on this defendant's records which in fact misrepresent and misstate this defendant's records, and have, as this defendant charges, utilized the bringing of this action as a basis for publishing baseless and unjustified charges; and have already abandoned many of the most serious charges originally made, such as the claim that this defendant's time clocks were "doctored" and did not correctly register the time at which they were punched.

Wherefore, this defendant prays that the complaint be dismissed with costs to it most grievously sustained.

Beaumont, Smith & Harris,
Albert E. Meder
Frank E. Cooper
Bert V. Nunneley,
Of Counsel,
Attorneys for Defendant,
Mt. Clemens Pottery Company,
2900 Union Guardian Building,
Detroit, Michigan.

January 3, 1942.

## MOTIONS

Now comes the defendant Mt. Clemens Pottery Company and moves the Court as follows:

1. This defendant moves that the said complaint be dismissed for the reason that it does not state a claim on which relief may be granted.

2. This defendant moves that the complaint be dismissed insofar as it purports to present a class or representative action, and that the scope of the action be limited to the claims of the named individual plaintiffs and of such other individuals as may properly intervene, for the following reasons, among others:

(a) The above entitled cause is not the type of case wherein Section 16 (b) of the Fair Labor Standards Act of 1938 or the rules of this Court permit the joining of separate and individual and independent claims of several parties, it appearing on the face of the complaint that there are not common questions of law and fact involved nor is common relief sought, nor is the character of the right alleged several.

(b) There is no proper showing that there exists any class or group of employees who are similarly situated, nor is there any showing that the named plaintiffs can provide proper or adequate representation of any such class.

(c) The above entitled action may not be maintained except by and for such individual employees as are named in the complaint or such other employees as may properly intervene herein on their own behalf, setting up their specific claims.

(e) The complaint does not contain allegations sufficient to justify the bringing of any such class or representative action as is sought to be maintained.

3. This defendant renews its motion to strike hitherto and on or about the 12th day of May, 1941, filed in the above entitled action.

4. This defendant hereby renews its several motions for particulars and to strike certain allegations by reason of the failure of the plaintiffs to furnish particulars and

adopts by reference the allegations in its motions dated and filed on or about May 12, November 1 and December 6, 1941, respectively.

Beaumont, Smith & Harris,
Albert E. Meder
Frank E. Cooper

Bert V. Nunneley,
Of Counsel,

Attorneys for Defendant,
Mt. Clemens Pottery Company,

2900 Union Guardian Building,
Detroit, Michigan.

January 3, 1942.

## ORDER

(Filed Jan. 5, 1942)

At a session of said Court held at the Federal Building in the City of Detroit, County of Wayne, State of Michigan, on the 5th day of January, A. D. 1942.

Present: Honorable Frank A. Picard, District Judge.

This matter came on for hearing before the Court on the following:

First, motion of the plaintiffs for judgment and motion of the plaintiffs for appointment of Special Master.

Second, Answer of Mt. Clemens Pottery Company to motion for judgment and for appointment of Special Master.

Third, Motion of Mt. Clemens Pottery Company to strike or for further particulars.

The latter includes Objections to Interrogatories annexed to the complaint.

Both parties having, by counsel, argued the foregoing the Court upon due consideration thereof finds as follows:

First, the request of plaintiffs for judgment at this time is denied without prejudice to their right to renew said motion at a later date.

Second, Motion of the defendant, Mt. Clemens Pottery Company to strike or for further particulars is denied. The Mt. Clemens Pottery Company shall file its answer herein on or before January 12, 1942.

Third, Plaintiffs' request for the Appointment of a Special Master herein will be held in abeyance until the filing of the answer by defendant herein, Mt. Clemens Pottery Company, on or before January 12, 1942.

Frank A. Picard,
United States District Judge

## SUPPLEMENTAL ORDER

(Filed Jan. 6, 1942)

At a session of said Court held at the Federal Building in the City of Detroit, County of Wayne, State of Michigan, on the 6th day of January, A. D. 1942.

Present: Honorable Frank A. Picard, District Judge.

This matter came on for hearing before the Court on the following:

First, motion of the plaintiffs for judgment and motion of the plaintiffs for appointment of Special Master.

Second, Answer of Mt. Clemens Pottery Company to motion for judgment and for appointment of Special Master.

Third, Motion of Mt. Clemens Pottery Company to strike or for further particulars.

Both parties having, by counsel, argued the foregoing, the Court upon due consideration thereof finds as follows:

First, the request of plaintiffs for judgment at this time is denied without prejudice to their right to renew said motion at a later date.

Second, Motion of the defendant, Mt. Clemens Pottery Company to strike or for further particulars is denied. The Mt. Clemens Pottery Company shall file its answer herein on or before January 12, 1942.

Third, Plaintiffs' request for the Appointment of a Special Master herein shall be held in abeyance until the filing of the answer by defendant herein, Mt. Clemens Pottery Company, on or before January 12, 1942.

Frank A. Picard,
United States District Judge.

## EXCEPTIONS OF DEFENDANT, MT. CLEMENS POTTERY COMPANY TO SUPPLEMENTAL ORDER OF JANUARY 6, 1942

(Filed Jan. 10, 1942)

Now comes The Mt. Clemens Pottery Company, one of the defendants in the above entitled cause, by its attorneys,

and notes of record its exceptions to the Supplemental Order entered herein under date of January 6, 1942, particularly insofar as the said order denies this defendant's motion to strike or for further particulars, on the grounds that such denial is contrary to law and the just rights of this defendant; and on the grounds that such denial renders it impossible for this defendant to apprise itself of the nature of the several and separate claims advanced on behalf of the plaintiffs, and of the parties claimed to be represented by plaintiffs herein, in time to properly prepare its responsive pleadings or to prepare for trial; and on the grounds that under the court rules in such case made and provided the plaintiffs should be required to state in their complaint in plain language what violations of the Fair Labor Standards Act are claimed to have occurred, as to what individuals it is claimed such violations occurred, when each such alleged violation is alleged to have occurred, what amount of damages is claimed for each individual as a result of such alleged violations, and the other particulars of their claims heretofore sought in this defendant's motions.

Beaumont, Smith & Harris,
Albert E. Meder,
Frank E. Cooper,
Bert V. Nunneley,
Of Counsel,
Attorneys for Defendant,
Mt. Clemens Pottery Company.
2900 Union Guardian Building,
Detroit, Michigan.

January 9, 1942.

## MOTION FOR SUMMARY JUDGMENT

(Filed Jan. 16, 1942)

Now comes the plaintiffs herein, including all persons who have intervened and filed their designations herein and upon the pleadings and records in this cause, and upon the annexed affidavits marked "Exhibits C, D and E," and move the Court to grant Summary Judgment against the defendant, Mt. Clemens Pottery Company, herein under and by virtue of Rule 56 of the Rules of Civil Procedure for the District Courts of the United States, and for the grounds of their Motion state:

(1) This action is brought by virtue of the provisions of the Fair Labor Standards Act of 1938 relating to the payment of overtime compensation and establishing maximum hours for industries engaged in interstate commerce.

(2) Plaintiffs state that pursuant to order of the Court herein defendant, Mt. Clemens Pottery Company, filed its answer herein on or about January 5, 1942. That in said answer defendant, Mt. Clemens Pottery Company, admits that each of the individual named plaintiffs is an employee, or former employee of the Mt. Clemens Pottery Company.

(3) Plaintiffs further state that on Page 7 of the Answer of The Mt. Clemens Pottery Company said defendant admits and states as follows:

> "This defendant further shows that where an employee punches the time clock before starting work or after quitting work this defendant does not compensate such employee for periods he was in the plant but not working prior to the start of work or subsequent to the close of work."

(4) The named plaintiffs individually state for themselves and for all other persons who have filed authorizations and designations herein worked in defendant's employment in accordance with the time set forth on the time clock records maintained by defendant and are entitled to compensation for the hours worked as set forth on said time clock records.

(5) The named plaintiffs for themselves and for and in behalf of all other employees similarly situated and particularly those who filed their designations or authorizations herein state that said time card records, maintained by defendant, Mt. Clemens Pottery Company, in accordance with the provisions of the Fair Labor Standards Act of 1938 provided an accurate record of the time actually worked in the service of the defendant, Mt. Clemens Pottery Company. That affidavits in support of said allegations are attached hereto, and marked "Exhibits C, D and E."

Wherefore, plaintiffs pray that their Motion for Summary Judgment be in all things granted and that plaintiffs, for themselves and for and in behalf of all other employees similarly situated and particularly for those who have filed their designations or authorizations herein, have judgment in accordance with the prayer of the complaint filed herein for amount of monies owing for time spent upon the premises of the defendant, in the service of the defendant, Mt. Clemens Pottery Company and as more fully set forth upon the time clock records of said Company.

Steve Anderson,
Earl Trombley,
Lillian Socia,
Albert Watkins, et al., etc.,
Plaintiffs.
By: Edward Lamb,
Counsel for Plaintiffs,
1014 Edison Building,
Toledo, Ohio.

## AFFIDAVIT

State of Michigan,
County of Macomb—ss.

Before me, the undersigned authority, on this day personally appeared Steve Anderson, one of the plaintiffs in the above entitled case, who being first duly sworn deposes and states:

(1) I am one of the plaintiffs in the above entitled cause; that I am the President of Local 1083, United Pottery Workers of America, an unincorporated trade association whose members are employees of the defendant, Mt. Clemens Pottery Company, Mt. Clemens, Michigan. That since on or about October 24, 1938, the effective date of the Fair Labor Standards Act of 1938, I have been an employee of said Mt. Clemens Pottery Company, Mt. Clemens, Michigan.

(2) I have read the answer of the defendant, Mt. Clemens Pottery Company, particularly Page 7 thereof wherein said Company states that it does not compensate employees for periods he was in the plant but not working prior to the start of work and subsequent to the close of work. Deponent states that he and other employees of said Company worked in the defendant's employment and service during all the times shown upon the time clock records kept and maintained by said Mt. Clemens Pottery Company.

(3) Deponent further states that at all times set forth in the time clock records kept and maintained by the defendant, Mt. Clemens Pottery Company said deponent and all other employees whose time is shown on said records were on the property and premises of said Company and

engaged in the employment and service of said Mt. Clemens Pottery Company. Deponent further states that he and all other employees entered the plant of defendant Mt. Clemens Pottery Company prior to punching the time clock as aforesaid and that thereafter deponent and all other employees were required to and did engage immediately upon activities, employment and services in behalf of defendant, Mt. Clemens Pottery Company.

(4) Deponent further states that, to his personal knowledge the time clock records accurately reveal the time actually worked by this employee and all other employees of The Mt. Clemens Pottery Company and that the computation of time worked by this deponent and all other employees was erroneously made by said defendant, Mt. Clemens Pottery Company, in such a manner and fashion as not to give credit for the hours worked by the employees of Mt. Clemens Pottery Company as aforesaid. Deponent further states that to his personal knowledge he and other employees started to work immediately after punching the said time clock; that the company over the objection of said employees, nevertheless paid only from the succeeding quarter hour when reporting into work and only to the preceding quarter hour when reporting out to lunch or at the end of the working day; that the defendant, Mt. Clemens Pottery Company, over the objection of this plaintiff and all other employees failed to pay this deponent and all other employees for the time actually worked on defendant's premises and in defendant's service and employment.

Steve Anderson.

Subscribed and sworn to before me
this 10th day of January, 1942.

Lester A. Almstadt,
Notary Public, Macomb County, Mich.
My commission expires Mar. 9th, 1945.

## AFFIDAVIT

State of Michigan,
County of Macomb—ss.

Before me, the undersigned, on this day personally appeared Lillian Socia, one of the plaintiffs in the above entitled case, who being first duly sworn deposes and states:

(1) I am one of the plaintiffs in the above entitled cause; that since on or about October 24, 1938, the effective date of the Fair Labor Standards Act of 1938, I have been an employee of said Mt. Clemens Pottery Company, Mt. Clemens, Michigan.

(2) I have read the answer of the defendant, Mt. Clemens Pottery Company, particularly Page 7 thereof wherein said Company states that it does not compensate employees for periods he was in the plant but not working prior to the start of work and subsequent to the close of work. Deponent states that she and other employees of said company worked in the defendant's employment and service during all the times shown upon the time clock records kept and maintained by said Mt. Clemens Pottery Company.

(3) Deponent further states that at all times set forth in the time clock records kept and maintained by the defendant, Mt. Clemens Pottery Company said deponent and all other employees whose time is shown on said records were on the property and premises of said Company and engaged in the employment and service of said Mt. Clemens Pottery Company. Deponent further states that she and all other employees entered the plant of de-

fendant, Mt. Clemens Pottery Company, prior to punching the time clock and that thereafter deponent and all other employees were required to and did engage immediately upon activities, employment and services in behalf of the defendant, Mt. Clemens Pottery Company.

(4) Deponent further states that, to her personal knowledge the time clock records accurately reveal the time actually worked by this employee and all other employees of the Mt. Clemens Pottery Company and that the computation of time worked by this deponent and all other employees was erroneously made by said defendant, Mt. Clemens Pottery Company, in such a manner and fashion as not to give credit for the hours worked by the employees of Mt. Clemens Pottery Company as aforesaid. Deponent further states that to her personal knowledge she and other employees started to work immediately after punching the said time clock; that the company over the objection of said employees, nevertheless paid only from the suceeding quarter hour when reporting into work and only to the preceding quarter hour when reporting out to lunch or at the end of the working day; that the defendant, Mt. Clemens Pottery Company, over the objection of this plaintiff and all other employees failed to pay this deponent and all other employees for the time actually worked on defendant's premises and in defendant's service and employment.

Lillian Socia.

Subscribed and sworn to before me
this 10th day of January, 1942.

Lester A. Almstadt,
Notary Public, Macomb County, Mich.
My commission expires Mar. 9th, 1945.

## AFFIDAVIT

State of Michigan,
County of Macomb—ss.

I, Floyd Pearl, being first duly cautioned and sworn depose and say:

(1) That I am now and have been since on or about October 24, 1938 an employee of The Mt. Clemens Pottery Company. That I have intervened in the above entitled proceedings and that I have heretofore filed my designation and authorization authorizing the named plaintiffs to act in my behalf as fully as if I had been named a plaintiff therein. That I as an intervener seek the same relief as do the named plaintiffs and all other persons and employees who have filed their designations herein.

(2) That I have read the answer of the defendant, Mt. Clemens Pottery Company, particularly Page 7 thereof wherein said Company states that it does not compensate employees for periods he was in the plant but not working prior to the start of work and subsequent to the close of work. Deponent states that he and other employees of said Company worked in the defendant's employment and service during all the times shown upon the time clock records kept and maintained by said Mt. Clemens Pottery Company.

(3) Deponent further states that at all times set forth in the time clock records kept and maintained by the defendant, Mt. Clemens Pottery Company said deponent and all other employees whose time is shown on said records were on the property and premises of said Company and engaged in the employment and service of said Mt.

Clemens Pottery Company. Deponent further states that he and all other employees entered the plant of defendant, Mt. Clemens Pottery Company, prior to punching the time clock and that thereafter deponent and all other employees were required to and did engage immediately upon activities, employment and services in behalf of the defendant, Mt. Clemens Pottery Company.

(4) Deponent further states that, to his personal knowledge the time clock records accurately reveal the time actually worked by this employee and all other employees of The Mt. Clemens Pottery Company and that the computation of time worked by this deponent and all other employees was erroneously made by said defendant, Mt. Clemens Pottery Company, in such a manner and fashion as not to give credit for the hours worked by the employees of Mt. Clemens Pottery Company as aforesaid. Deponent further states that to his personal knowledge he and other employees started to work immediately after punching the said time clock; that the company over the objection of said employees, nevertheless paid only from the succeeding quarter hour when reporting into work and only to the preceding quarter hour when reporting out to lunch or at the end of the working day; that the defendant, Mt. Clemens Pottery Company, over the objection of this plaintiff and all other employees failed to pay this deponent and all other employees for the time actually worked on defendant's premises and in defendant's service and employment.

Floyd Pearl.

Subscribed and sworn to before me
this 10th day of January, 1942.

Lester A. Almstadt,
Notary Public, Macomb County, Mich.
My commission expires Mar. 9th, 1945.

## ANSWER OF DEFENDANT MT. CLEMENS POTTERY COMPANY TO MOTION FOR SUMMARY JUDGMENT

(Filed Jan. 24, 1942)

Now comes The Mt. Clemens Pottery Company, one of the defendants in the above entitled case, by its attorneys, in answer to plaintiffs' motion for summary judgment, and shows unto the Court as follows:

1. Answering paragraph (1), this defendant admits that this action purports to be brought under the Fair Labor Standards Act of 1938, but denies that the action is properly brought under the said statute and denies that the subject of the Act is correctly stated in the motion.

2. Answering paragraph (2), this defendant refers to its answer, heretofore filed herein, for a statement as to the contents thereof.

3. Answering paragraph (3), this defendant shows that plaintiffs' motion does not fully state the allegations contained on page (7) of this defendant's answer (where answer is made to subdivision II(A) of plaintiffs' amended Bill of Particulars) but, on the contrary, refers to a part only of such allegation, and for a correct and full statement of its position, this defendant refers to its answer aforesaid.

4. Answering paragraph (4), this defendant denies that plaintiffs, or any of them, or any individuals claimed to be represented by them, were engaged in work in this defendant's employment during all the periods indicated by the printed figures on the time clock cards as a record

of the time of the employees' entrance to and exit from the plant, and denies all the other allegations in said paragraph contained, and shows unto the Court that there was manually recorded each day on each time clock card a figure showing the number of hours worked by the holder of the card during the preceding day, and further shows that each such employee has at all times been fully compensated, in accordance with the provisions of the law, for all hours worked, and shows that no employee worked longer hours than he is so given credit for on said time clock cards.

5. Answering paragraph (5), this defendant denies the same, except that it shows that no employee worked longer than indicated by the figures recorded by this defendant in the manner aforesaid on the time clock cards as showing the total hours worked each day by the respective holders of said cards. Further answering, this defendant denies that there are involved herein any claims of any employees who were not named in the complaint or who did not properly intervene herein.

6. Further answering, this defendant shows that any claims of plaintiffs must be denied by reason of the several affirmative defenses set forth fully in this defendant's answer aforesaid, reference to which is hereby prayed, and by reason of the grounds set forth in the motion to dismiss annexed to this defendant's answer; and this defendant shows that plaintiffs have made no attempt to meet such defenses, and that for this reason, among others, plaintiffs' motion for summary judgment should be denied. Defendant further shows that for the reasons stated in the annexed affidavit of Charles E. Doll, Sr., this defendant cannot properly present by affidavit all the facts on which such affirmative defenses will be based.

7. There are attached hereto and hereby made a part hereof certain affidavits; and this defendant requests that it may be afforded time, if it should be so advised and if

it should appear necessary, to supplement the said affidavits, as provided in Rule 56, Rules of Civil Procedure.

8. Answering the prayer for relief, this defendant denies that plaintiffs are entitled to any relief whatever.

Wherefore, this defendant prays that plaintiffs' said motion be in all respects denied, with costs.

Beaumont, Smith & Harris,
Albert E. Meder
Frank E. Cooper,
Bert V. Nunneley,
Of Counsel,
Attorneys for Defendant,
Mt. Clemens Pottery Company,
2900 Union Guardian Building,
Detroit, Michigan.

Dated: January 23, 1942.

State of Michigan,
County of Macomb—ss.

CHARLES E. DOLL, SR., being first duly sworn, deposes and says that he is Vice-President and General Manager of The Mount Clemens Pottery Company, one of the defendants in the above entitled cause.

Deponent further says that he has read the complaint and answer and motion for summary judgment heretofore filed herein.

Deponent further states that The Mount Clemens Pottery Company has been engaged in business at Mount Clemens, Michigan, for twenty-seven years under deponent's management, and that at no time during all this

period has it been engaged in any wage dispute with its employees, but on the contrary it has paid its employees wages as good as or better than those prevailing in other plants in the pottery industry.

Deponent further states that he can competently testify of his own knowledge that each of the employees of The Mount Clemens Pottery Company has established times for starting and stopping work, and that employees are permitted to check into the plant for periods not in excess of fourteen minutes before such established starting time, not for the purpose of beginning work but only for the employees' convenience.

Deponent further states that he can competently testify of his own knowledge that employees are likewise given fourteen minutes' leeway to ring out of the plant after the established times for stopping work.

Deponent further says that he can competently testify of his own knowledge that the employees are not charged with any duties for such periods (from one to fourteen minutes in duration) when they may be in the plant prior to the established starting time (either at the beginning of the working day or at the renewal of work after the lunch period) or subsequent to the established stopping times (either for lunch or at the end of the working day).

Deponent further says that he can competently testify of his own knowledge that no employees are required to be at the plant prior to their established starting times. They are not permitted to punch in more than fourteen minutes before starting work; nor are employees required to remain on the premises after stopping work, but are permitted for their own convenience and

if they so desire to remain in the plant for periods up to fourteen minutes before ringing out.

Deponent further says that he can competently testify of his own knowledge that since previous to May, 1934, the payroll department of The Mount Clemens Pottery Company has each morning computed the number of hours worked by each production employee during the preceding day, and such computation is then recorded on each clock card so that each employee whenever he picks up his time clock card has before him a record as to the number of hours he is given credit for having worked on each preceding day of the pay period.

Deponent further says that he can competently testify of his own knowledge that no employee has at any time objected to such computations or claimed that any error existed and no claim was ever made that any employee worked longer hours than he was given credit for, prior to the filing of the complaint in this action.

Deponent further states that he can competently testify of his own knowledge that all the named individual plaintiffs and substantially all the employees claimed to be represented by plaintiff Union and substantially all the other production workers employed by the company work on piece rates, and therefore are paid primarily not for hours worked, but for work done.

Deponent further states that he can competently testify of his own knowledge that time clock cards showing the method of computation of hours worked by production employees of The Mount Clemens Pottery Company were examined by inspectors of the Wage and Hour Division of the United States Department of Labor in November, 1939, and one of said inspectors at that time interviewed many employees, and as deponent is advised discussed

with said employees the subject of their wages and hours, but neither the said inspectors nor the Wage and Hour Division claimed to deponent that The Mount Clemens Pottery Company's computations of hours worked by its production employees were in any respect not in compliance with the law.

Deponent further says that he is advised and believes that the payroll procedures of The Mount Clemens Pottery Company are fully in compliance with the law.

Deponent further says that he can competently testify of his own knowledge that employees do not remain at work continuously between their starting and stopping times, but at frequent intervals take recesses, during which periods they do no work and for which no deduction is made in computing the hours worked.

Deponent further says that he can competently testify of his own knowledge that The Mount Clemens Pottery Company has always kept, now has in its possession and control, and has made available to the plaintiffs' records, which as this deponent is advised, fully comply with every provision of the Wage and Hour Law, and particularly with the provisions of Section 11(c) thereof; and of which said records the time clock cards are only a minor portion.

Deponent further says that he has been engaged in the manufacturing business for the past twenty-seven years and upwards and has made a study and investigation of the method of computing time generally in use by concerns engaged in the pottery industry and other manufacturing concerns, and that the methods used by The Mount Clemens Pottery Company are the methods which have been customarily used by manufacturing companies for many years last past.

Deponent further says that the foregoing affidavit is made in opposition to plaintiffs' motion for summary

judgment, and is therefore restricted in scope to matters germane to said petition, and is not intended to cover and does not cover all the facts of the case, but on the contrary omits reference to many of the facts on which are based the special defenses of The Mount Clemens Pottery Company in the above entitled matter.

Deponent further says that proof of such other facts so pleaded in the answer of The Mount Clemens Pottery Company and not discussed in plaintiffs' motion for summary judgment or in the supporting affidavits annexed thereto, would require the examination of many witnesses and the production of numerous documents.

Further deponent says not.

Chas. E. Doll, Sr.

Subscribed and sworn to before me this 22nd day of January, 1942.

Eleanor Schulte,
Notary Public, Macomb County, Mich.
My commission expires 10-25-42.

State of Michigan,
County of Macomb—ss.

ERNEST HARMS, being first duly sworn, deposes and says that he is and at all times since October, 1938, has been an employee of the brushing and dipping department of The Mount Clemens Pottery Company, and that since July, 1939, he has been foreman in said department, and that he knows of his own personal knowledge and can competently testify that Steve Anderson and Lillian Socia have been during such period employed in said brushing and dipping department, and that this deponent is familiar with the hours worked by said Steve Anderson and Lillian Socia, respectively, and all other employees in said department.

Deponent further states of his personal knowledge that said Steve Anderson and Lillian Socia and likewise the other employees of The Mount Clemens Pottery Company in said department, were not engaged at work in The Mount Clemens Pottery Company's employment and services during all the times shown on the time clock cards as indicating the hour and minute when the employee checked into and out of the plant each day.

Deponent further states of his own knowledge that the hours printed on the time clock cards indicating the time of entry into and exit from the plant do not reveal the time actually worked by said Steve Anderson and Lillian Socia, or either of them, or of other employees, and deponent states that said Steve Anderson and Lillian Socia and likewise the other employees of The Mount Clemens Pottery Company in said department, to deponent's personal knowledge, did not immediately after punching the time clock engage in activities and services on behalf of The Mount Clemens Pottery Company, nor did the said Steve Anderson and Lillian Socia and other employees continue to be engaged in such activities until the hour and minute when they punched out their time clock card at the close of work.

Deponent further states that as foreman of the brushing and dipping department of The Mount Clemens Pottery Company he instructed Steve Anderson and Lillian Socia and other employees in the said department not to commence work until the established starting time, and further instructed them to cease work at the established stopping time.

Deponent further says that he did not suffer or permit employees to work in violation of such instructions.

Deponent further states that said Steve Anderson and Lillian Socia and likewise other employees were not

charged with any duties for periods he or they were in the plant but not working prior to the start of work or subsequent to the close of work.

Further deponent says not.

Ernest Harms, Jr.

Subscribed and sworn to before me this 22nd day of January, 1942.

Eleanor Schulte,
Notary Public, Macomb County, Mich.
My commission expires 10-25-42.

State of Michigan,
County of Macomb—ss.

WILLARD STIEF, being first duly sworn, deposes and says that he is and at all time since October, 1938, has been foreman of the glost unloading department of The Mount Clemens Pottery Company, and that he knows of his own personal knowledge and can competently testify that Floyd Pearl has been during such period employed in said glost unloading department, and that this deponent is familiar with the hours worked by said Floyd Pearl and all other employees in said department.

Deponent further states of his personal knowledge that said Floyd Pearl and likewise the other employees of The Mount Clemens Pottery Company in said department were not engaged in work in The Mount Clemens Pottery Company's employment and services during all the times shown on the time clock cards as indicating the hour and minute when the employee checked into and out of the plant each day.

Deponent further states of his own knowledge that the hours printed on the time clock cards indicating the time of entry into and exit from the plant do not reveal the time actually worked by said Floyd Pearl or of other employees, and deponent states that said Floyd Pearl and likewise the other employees of The Mount Clemens Pottery Company in said department, to deponent's personal knowledge, did not immediately after punching the time clock engage in activities and services on behalf of The Mount Clemens Pottery Company, nor did the said Floyd Pearl and other employees continue to be engaged in such activities until the hour and minute when they punched out their time clock card at the close of work.

Deponent further states that as foreman of the glost unloading department of The Mount Clemens Pottery Company he instructed Floyd Pearl and other employees in the said department not to commence work until the established starting time, and further instructed them to cease work at the established stopping time.

Deponent further says that he did not suffer or permit employees to work in violation of such instructions.

Deponent further states that said Floyd Pearl and likewise other employees were not charged with any duties for periods he or they were in the plant but not working prior to the start of work or subsequent to the close of work.

Further deponent says not.

Willard Stief

Subscribed and sworn to before me this 22nd day of January, 1942.

Eleanor Schulte,
Notary Public, Macomb County, Mich.
My commission expires 10-25-42.

State of Michigan,
County of Macomb—ss.

AGNES E. BENBENNICK, being first duly sworn, deposes and says that she is Office Manager of The Mount Clemens Pottery Company and in charge of payroll records of the company and the keeping thereof.

Deponent further says that since May, 1934, and prior thereto, employees of the Payroll Department of The Mt. Clemens Pottery Company, under deponent's direction, have followed the practice of computing each morning the number of hours worked by each production employee during the preceding day, and such computations are then and there written on each clock card of each such employee and returned to the racks before the next punching period, so that each production employee, whenever he picks up his time clock card, has before him a record as to the number of hours he is given credit for having worked on each preceding day of the pay period.

Deponent further says that she has for many years last past had charge of payment of employees, and that at no time has she received any objection to the effect that any employee claimed he worked longer hours than he was given credit for on the time clock cards.

Deponent further says that in November, 1939, she explained to an inspector of the Wage and Hour Division of the United States Department of Labor, who was then examining the payroll records of The Mount Clemens Pottery Company, the method by which said company computed the number of hours worked each day by each of its production employees, and said inspector made no objection thereto.

Deponent further says that the time clock cards of the production employees of the said company show that all

of said employees entered the plant at various times from fourteen minutes to starting time up to starting time, and likewise left the plant at various times between the stopping time and fourteen minutes thereafter.

Further deponent says not.

Agnes E. Benbennick

Subscribed and sworn to before me this 22nd day of January, 1942.

Eleanor Schulte,
Notary Public, Macomb County, Mich.
My commission expires 10-25-42.

## ORDER DENYING MOTION FOR SUMMARY JUDGMENT

(Filed Jan. 27, 1942)

At a session of said Court held in the Federal Building, in Detroit, Michigan, the 26th day of January, 1942.

Present: Hon. Frank A. Picard, District Judge.

The above entitled cause having come on to be heard on motion of plaintiffs for summary judgment and counsel having been heard and the Court being fully advised in the premises and upon due consideration, it is hereby

Ordered, that the said motion for summary judgment be and the same is hereby denied.

Frank A. Picard,
District Judge.

## ORDER

(Filed Jan. 28, 1942)

At a session of said Court, held at the Federal Building in the City of Detroit, County of Wayne, State of Michigan, on the 28th day of January, A. D. 1942.

Present: Honorable Frank A. Picard, District Judge.

This matter came on for hearing before the Court on the following motions:

First, Motion of the plaintiffs for Summary Judgment,

Second, Answer of the Defendant, Mt. Clemens Pottery Company to Motion for Summary Judgment, and

Third, Application of both parties to refer the issues of fact to a Master for his investigation, report and decision.

Both parties having, by counsel argued the first motion, the Court, upon due consideration thereof, finds as follows:

First, The Motion of the plaintiffs for Summary Judgment at this time and based upon the affidavits filed in support thereof, is denied without prejudice however, to the filing of a new Motion for Summary Judgment after the Special Master appointed herein shall make his recommendations as to the facts herein.

Second, This cause having come on to be heard further upon the application of all parties to refer the issues

of fact to a Master for his investigation, report and decision and it appearing to the Court that said cause is at issue and both parties are present, consenting to the reference and determination and computation of the monies owing the plaintiffs and the persons filing their Authorizations or Designations with the Clerk of this Court.

It Is Therefore, Ordered, Adjudged and Decreed that said cause with its pleadings, evidence and exhibits be referred to Donald L. Quaife to hear and determine the issues of fact arising in this cause; and It Is Further Ordered, Adjudged and Decreed that said Donald L. Quaife shall begin the taking of testimony, examination of the time clock cards, payroll records and receive in evidence such other oral or written testimony as may be proper in the premises on or before February 9, 1942; that said Donald L. Quaife shall expeditiously conduct said hearings and make his report including his findings of fact and conclusions of law thereon to this Court by the 1st day of April, 1942, and the same shall be filed to wait the further action of this Court. The fees and expenses of the said Master shall be filed with the Clerk of this Court and shall be included in the costs herein, the same shall follow and be assessed in accordance with the further order of this Court.

Frank A. Picard,
United States District Judge.

## SUPPLEMENTAL ORDER

(Filed Jan. 29, 1942)

At a session of said Court held at the Federal Building in the City of Detroit, County of Wayne, State of Michigan, on the 29th day of January, A.D. 1942.

Present: Honorable Frank A. Picard, District Judge.

This matter came on for hearing before the Court on the following motions:

First, Motion of the Plaintiffs for Summary Judgment.

Second, Answer of the Defendant, Mt. Clemens Pottery Company to Motion for Summary Judgment, and

Third, Application of Plaintiffs to refer the issues of fact to a Master for his investigation, report and decision.

Both parties having, by counsel argued the first motion the Court, upon due consideration thereof, finds as follows:

First, The Motion of the plaintiffs for Summary Judgment at this time and based upon the affidavits filed in support thereof, is denied without prejudice however, to the filing of a new Motion for Summary Judgment after the Special Master appointed herein shall make his recommendations as to the facts herein.

Second, This cause having come on to be heard further upon the application of the plaintiffs to refer the said

cause to a Master for his investigation, report and decision and it appearing to the Court that said cause is at issue and both parties are present, consenting to the reference and determination and computation of the monies, if any, owing the plaintiffs of the persons having filed their Authorizations or Designations with the Clerk of this Court.

It Is Therefore Ordered that said cause with its pleadings, evidence and exhibits be referred to Donald L. Quaife as Special Master to hear the parties and to take testimony with respect to the issues as framed by the pleadings herein, and to report his findings of fact and conclusions of law thereon to this Court; and It Is Further Ordered that said Donald L. Quaife shall begin the taking of testimony, examination of the time clock cards, payroll records and receive in evidence such other oral or written testimony as he may deem proper in the premises on or before February 9, 1942; that said Donald L. Quaife shall expeditiously conduct said hearings and make his report including his findings of fact and conclusions of law thereon to this court by the 1st day of April, 1942, and the same shall be filed to wait the further action of this Court. The fees and expenses of the said Master shall be filed with the Clerk of this Court and shall be included in the costs herein, the same shall follow and be assessed in accordance with the further order of this Court.

This order supersedes the order heretofore entered by this Court on the 28th day of January, A.D. 1942.

United States District Judge.
Frank A. Picard,

## DESIGNATION

(Filed Jan. 30, 1942)

The undersigned hereby authorize the United Pottery Workers of America, affiliated with the C.I.O., Local 1083, and the named plaintiffs in the above entitled action, to act as plaintiffs in the above entitled action and we each hereby designate said Union to act as our respective agent in the prosecution of said action for unpaid overtime compensation and minimum wages owing us under or by virtue of said Fair Labor Standards Act of 1938.

Irene Nocker
Irene Miller
Aletha Thomas
Stan Holmes, Jr.
Samuel Kozalmann
Aleck Mokanyk
Nick Mokanyk
Norman Gamn
Ethel Copeland
Agnes Lengyel
Dorothy Herpel
Dorothy Kendall
Margaret Williams
Alfred Compare
Ray Willey

## DESIGNATION

(Filed Feb. 10, 1942)

The undersigned hereby authorize the United Pottery Workers of America, affiliated with the C.I.O., Local 1083 thereof and the named plaintiffs in the above entitled action, to act as plaintiffs and representatives for the undersigned in the above entitled action and we each hereby designate said Union to act as our respective agent in the prosecution of our claims against The Mt. Clemens Pottery Company for unpaid overtime compensation and minimum wages owing us under or by virtue of said Fair Labor Standards Act of 1938.

Bill Behnke
Ernest Glawe
Alice Stoll
Albert Thomas
Thelma Hampton
Robert Green
Paul Siewart
Melvin Bobcean
Eric Sopha
Julia Kudla
Antoinette Kudla
Carl Sievart
Mary Erz
Helen Boseak
Aleck Mokanyk
Arthur Meitz
Florence Madus
Virginia MacLeod
Florence Miller
Dorothy Strong

## REPORT OF SPECIAL MASTER

(Filed Mar. 23, 1943)

To the Honorable Frank A. Picard, District Judge:

This is an action for alleged violation of the Fair Labor Standards Act of 1938 (popularly known as the "Wage and Hour Act"), involving principally the question of whether the company has paid its employees for overtime work in accordance with the law. The plaintiffs are a labor union and seven employees or former employees of the defendant, Mt. Clemens Pottery Company, all of whom are members, and some of whom are officers, of the said Union. The suit is brought by plaintiffs for themselves and on behalf of all employees similarly situated. By order of the court entered June 13, 1941, those employees desiring to be represented by the plaintiffs pursuant to Section 16(b) of the Act, were required to sign and file with the court written designations authorizing such representation. Pursuant to said order, nearly three hundred employees or former employees of the Pottery Company have filed designations authorizing plaintiff Union to represent them.

The defendant Mt. Clemens Pottery Company (hereinafter referred to as "Pottery Company" or simply "Company") is a Michigan corporation engaged in the manufacture of dinnerware, with a plant and offices located at Mt. Clemens, Michigan. The Pottery Company is a wholly owned subsidiary of the other defendant, S. S. Kresge Company (with the exception of certain qualifying shares owned by directors). It is claimed by plaintiffs that within the meaning of the Act the Kresge

Company is an employer of persons primarily employed by the Pottery Company and is liable to them for any violations of the Act.

A number of violations of the Fair Labor Standards Act are charged in the compliant, the principal one being the alleged failure of the company to credit its employees with all the time they worked, thus depriving them of the extra compensation for overtime required by the law. As set forth in paragraph 7 of the complaint, the claim is that the time clock records of the employees were deliberately falsified by the company, employees being compelled to work fourteen minutes in advance of the time shown on the time clocks in the morning of each working day, ten minutes after the time shown on the clocks at lunch, fourteen minutes extra at the beginning of the afternoon, and fifteen minutes extra on quitting work. It is alleged that since October 24, 1940, the company has required its employees to work an extra forty minutes per day or approximately 3¼ hours per week, in addition to the forty hours shown on the time clocks erroneously maintained. The charge is essentially one that the time clocks were deliberately set incorrectly by the company to cheat its employees out of credit for working time. A related allegation, in Paragraph 5, is that since October 24, 1940, the company has been working its employees approximately 45 hours per week without paying for overtime. Other violations of the Act charged by the complaint are the payment of sub-minimum wages, 10% being deducted from the minimum statutory pay agreed to be paid to new employees; the requirement that certain women employees doing decal work are required to work at home without compensation; and the action of the company's foreman Harms in falsifying records of forty female employees by punching out their time cards sixty-one minutes before they stopped work. The complaint claims damages in the amount of $100,000, asking for

judgment in that amount, plus the allowance of a reasonable attorney's fee.

Following the filing of the complaint, a considerable number of motions were filed and other preliminary proceedings taken, which resulted, among other things, in the filing by plaintiffs of two successive bills of particulars. These, together with explanatory statements of counsel in open court, have resulted in amplification and clarification of the charges in the complaint. The claim of homework was dropped*, as was the claim that the time card records were false; instead, it was claimed that the time cards (with the exception of one type of situation hereafter indicated) accurately reflected the work done by the employees, but that the company did not compute the working time of its employees or pay them in accordance with the time card records. The amended Bill of Particulars added claims of "charity work" and "unauthorized deductions," and in addition contained certain claims which have not been particularly pressed on the trial. Without going into a detailed analysis of the bill of particulars and related proceedings, it is sufficient to state that the following fairly well defined claims of plaintiffs were presented to the court at the time of trial, and evidence was submitted upon them:

1. That all employees of the Pottery Company worked approximately fifty-six minutes more time per day than they were given credit for by the company, pursuant to a system under which they were required to report for work at the beginning of each shift, fourteen minutes prior to the time which the company called their starting time, to work fourteen minutes beyond the company-established quitting time for lunch, and to follow the same procedure on the second half of the shift.

*It may be noted that the only reference to homework in the testimony was the volunteered statement of one of plaintiffs' witnesses that she was not permitted to do decal work at home (R. 1850).

2. That, in any event, all the time spent by the employees from the time they punched their time clocks in until the time they rang out constituted working time, but the company did not credit them with the full amount of this time.

3. That all employees were required to do what is known as "charity work," including such work as cleaning and oiling machinery, without compensation therefor; and that, in some cases, this work was done outside the time shown on their time cards, so that they were not even credited with the time thus spent.

4. That unauthorized deductions were made from the wages paid to employees of the Pottery Company to pay for tools and equipment used in the company's manufacturing operations.

5. That unauthorized deductions were made from the pay of certain employees to be used to make up the wages of another employee, referred to as the "invisible man."

6. That all women employees were paid wages below the statutory minimum requirements.

The answer of the defendant Pottery Company contains a general denial of all claims of violation of the Act made by plaintiffs; and in addition certain affirmative defenses are interposed, which can be summarized as follows:

1. That all claims of the individual plaintiffs and those represented by plaintiff Union for all periods prior to November 14, 1939, were settled by an accord and satisfaction entered into shortly after that date.

2. That practically all of the plaintiffs and the represented employees were paid on a piece work basis, and

that the law does not require that such workers be paid overtime at one and one-half times their average hourly rate, as contended by plaintiffs.

3. That the plaintiffs and represented employees are estopped from maintaining this suit by their acquiescence and failure to object concerning the practices complained of.

4. That the plaintiffs and represented employees are bound by acceptance of an alleged ruling of the Wage and Hour Division at the time of an inspection of the Pottery Company in November, 1939, approving its practices as in compliance with the Act, which practices have been continued unchanged.

5. That employees took frequent recesses during the day, with the permission of the employer, which time was credited as working time and which should be offset against any working time which may be found not to have been credited to them.

6. That the interstate commerce provisions of the Act are not shown by the complaint to have been satisfied.

7. That this suit was not brought in good faith, but rather as an incident to a campaign to organize the Pottery Company, and constitutes an abuse of process of the court.

8. That extra compensation was paid by the company to employees twice a year, which payments should be offset against any recovery to which plaintiffs may otherwise be found entitled.

9. That the plaintiff Union has not been properly authorized by its constitution or membership to institute this suit on behalf of employees of the company.

There is a question as to whether the last two defenses listed above have been raised in the answer. In addition, certain defenses have been made since the trial based upon the alleged insufficiency of the evidence.

The answer of the defendant S. S. Kresge Company claims that it is not an employer within the meaning of the Act.

A lengthy trial was had before the Master upon the issues involved in the case, the typewritten transcript totaling more than 3,500 pages. During the course of the trial, certain claims not raised in the pleadings or opening statement of counsel were brought up by plaintiffs. These included the claim that office workers were not compensated in accordance with the Act (it does not appear that any of the plaintiffs or represented employees are office workers); that the company violated the child labor provisions of the Act; that if in any seven consecutive days more than the statutory period is worked the company must pay overtime, regardless of the amount of time worked during the established work week; and that company meetings were held without crediting the employees with the time spent in attending them. Upon objection, the Master held that in the absence of amendment of the pleadings testimony should not be taken upon these issues. The testimony submitted by plaintiffs at the trial consisted largely of that of eight employees or former employees of the company, affiliated with the plaintiff Union, while that of the Pottery Company consisted primarily of the testimony of foremen and managerial representatives of the company. In addition, there was expert testimony on each side as to industrial customs and practices, and an inspector of the Wage and Hour Division of the United States Department of Labor testified for plaintiffs. Thereafter, elaborate briefs were

submitted by all parties, which have been carefully studied.

In passing upon the issues raised in this case, I think it most convenient to put my report in opinion form, with a list of numbered findings of fact and conclusions of law appended. Some of the defenses are of a more or less preliminary character, not involving directly the question of violation of the substantive provisions of the Act; and these, in my opinion, can be most conveniently disposed of at the outset, clearing the way for focus upon the major issues in the case.

## ISSUES NOT INVOLVING SUBSTANTIVE PROVISIONS OF ACT

### A. Interstate Commerce

It is urged by the defendant Pottery Company that the case does not even come under the Act, because the complaint does not show on its face that the interstate commerce provisions of the Act have been satisfied. The Fair Labor Standards Act is somewhat unusual in the field of federal regulation under the interstate commerce power in that it sets up an employee, rather than employer, test for determining its coverage. Kirschbaum v. Walling, 316 U.S. 517, 86 L. Ed. 1054; Walling v. Jacksonville Paper Co., 87 L. Ed. 393 (Supreme Court Opin. No. 336, decided Jan. 18, 1943). It applies in terms to employees "engaged in commerce or in the production of goods for commerce." It is further provided (Sec. 3(j)) that an employee shall be deemed to have been engaged in the production of goods if he was "employed in any process or occupation necessary to the production of goods." "Commerce" is defined in substance to mean interstate commerce. Sec. 3(b).

There can, I think, be no question but what on this record the employees involved in this suit were engaged in the production of goods for commerce, within the meaning of the Act. Practically all of the raw materials used by the company in the manufacture of dinnerware come from outside the State of Michigan. Approximately fifty per cent of the finished product, by dollar volume, is sold to the parent Kresge Company on direct order from its stores located throughout the country, and shipped to them direct. The remaining fifty per cent is sold and shipped to other buyers outside the state. There is no showing that any part of the business of the Pottery Company is of a separable, intrastate character. The employees suing or represented here were all employed in the plant of the company, and must all be deemed to have been employed directly in the production of goods for interstate commerce or in occupations necessary thereto. See Kirschbaum v. Walling, supra; Warren-Bradshaw Drilling Co. v. Hall (Supreme Court Opin. No. 21, 1942); Walling v. Jacksonville Paper Co., supra.

The Company's contention is that the complaint does not specifically allege that the plaintiffs or represented employees are engaged in the production of goods for interstate commerce, but rather that they are "engaged in interstate commerce," which they are not. It may be that the language used in the complaint is somewhat inappropriate to express the thought involved, which seems resaonably clear from other allegations (Paragraphs 1 and 8) which suggest (though not expressly stating) that the employees are engaged in production for commerce. However, in view of those allegations, the clear record on the point, and the liberal rules of construction of pleadings which prevail (see Rule 15(b) of Federal Rules Civil Procedure relating to amendments of pleadings), it would be overly technical to hold that the complaint should be dismissed because of some inaptness of expression in the allegation.

B. Liability of Kresge Company

An issue is presented as to whether the defendant S. S. Kresge Company is an employer within the meaning of the Fair Labor Standards Act. The Act defines "employer" to include "any person acting directly or indirectly in the interest of an employer in relation to an employee." The evidence here as to the relationship between the two companies is restricted almost entirely to the testimony of Charles E. Doll, Vice-President and General Manager of the Pottery Company. From this, it appears that the Kresge Company owns all of the stock of the Pottery Company, except for qualifying shares, that the officers of President and Treasurer of the two companies are held by the same person, and that seven of the ten directors of the Pottery Company are also directors of the Kresge Company. The Kresge Company also purchases approximately one-half of the output, by dollar sales volume, of the Pottery Company.

According to Doll's testimony, however, there is no interference by the Kresge Company in the internal management of the Pottery Company. According to him, he as general manager alone controls the labor and employment policies of the company, the sale of the finished product, and the adoption of new machinery and new manufacturing processes. Report is made by him to the directors of the company concerning operations at the meetings of the board held three or four times a year (sometimes at the Kresge offices in Detroit and sometimes in Mt. Clemens), at which the operating policies are considered; but, otherwise decisions on these matters are made by him. Doll's compensation is received from the Pottery Company, and dividends upon Kresge stock owned by him constitute the only money he receives direct from the Kresge Company. The record is barren of any proof of direct domination by the Kresge Company, disregard

of corporate formalities, or under-capitalization of the Pottery Company, rendering it unable to respond to a judgment for plaintiffs here. Plaintiffs claim that domination is proved by evidence of a sign on the water tower of the Pottery Company plant, which according to the witness Dacko read, "Owned and operated by S. S. Kresge Company," and which was recently painted over. However, a photograph of the sign in question in a C.I.O. news organ and the testimony of the plant engineer, indicating that the sign can still be read through the covering paint, show conclusively that the sign in question read, "Mt. Clemens Pottery Co., Owned by S. S. Kresge Co." and did not contain the word "operated." The claim which has been reiterated by plaintiffs that negotiations over labor problems were carried on at a meeting held between the President of the Kresge Company and certain employees of the Pottery Company is not supported by any evidence, unless denials are to be considered evidence.

The question therefore presented is whether where one corporation owns all the stock of another and the two have interlocking officerships and directorates, but there is no additional evidence of domination or other facts justifying the conclusion that the relationship between them is one of principal and agent, the parent company is an employer of persons primarily employed by the subsidiary, within the meaning of the Act. Plaintiffs cite no applicable authorities, and there appear to be no decisions on the point arising under the Fair Labor Standards Act. However, there are several decisions of appellate courts arising under the National Labor Relations Act, which contains an almost identical definition of the term "employer." It appears that the more recent cases on the question hold that in the absence of additional circumstances the parent company is not an employer. Press Co. v. N.L.R.B., 118 F. (2d) 937 (Ct. of Ap., D.C.):

N.L.R.B. v. Timken Silent Automatic Co., 114 F. (2d) 449 (C.C.A. 2). The former case (in which one judge dissented on the ground that the record did in fact establish the domination required) contains the most complete discussion of the question. Cases holding the parent company liable were there distinguished on the ground that they prove something more than the mere holding of the controlling stock ownership. Consolidated Edison Co. v. N.L.R.B., 305 U.S. 197, 83 L. Ed. 126; N.L.R.B. v. Lund, 103 F. (2d) 815 (C.C.A. 8); N.L.R.B. v. Pennsylvania Greyhound Lines, 303 U.S. 261, 82 L. Ed. 83); Labor Board v. Hearst, 102 F. (2d) 658 (C.C.A. 9). While a good argument can perhaps be made that as a matter of statutory policy a parent corporation should in all cases be held jointly liable with its subsidiary for violations of the Act, it would seem that Congress would have expressly so stated if it had intended that result.

Accordingly, I conclude the Kresge Company is not an employer under the Act, and that the complaint should be dismissed as to it. It would seem that the issue is of relatively little practical importance, since it seems probable from an affidavit of its treasurer on file that the Pottery Company is amply able financially to respond to any judgment which may be obtained by plaintiffs here.

C. ESTOPPEL

It is contended by the Pottery Company that the plaintiffs are legally estopped to maintain this action, because of acquiescence on the part of them and the rest of the employees over a period of years in the practices of the company with respect to computation of time. Concerning the principal claim involved in this proceeding—the company's method of computing working time—it is pretty clear from the record that the employees, although well acquainted with the company's practices, did not

object or complain about them to the management prior to the institution of this suit. It is not necessary here to rely upon the testimony of the general manager and the foremen to that effect. Most of the plaintiffs' witnesses, including practically all who testified on the subject, admitted that they had made no complaints to the company. They further admitted that they knew of the system followed by the company in computing time, that they could see each day on their time cards the hours credited to them for previous days' work, and that the system had been in effect without change for several years prior to this suit. Some of the employees testifying stated that they did not complain because of fear of discharge; however, they testified that they felt free to complain about other matters relating to computation of their pay, which sometimes resulted in adjustment and for which they were not discharged or censured. The claim is made that the employees made a collective protest through the medium of a strike about the time this suit was instituted, but there is no clear evidence that any demands relating to the Wages and Hours Act were made upon the management in connection with the strike. Finally, there is some contention that the witness Dacko protested by walking out one day when asked to work overtime. While the incident referred to occurred subsequent to commencement of this action, it seems clear from Dacko's testimony that his objection was to working more than eight hours in a single day (which he recognized was not forbidden by the Act) and not to any violation of the Act. On the other hand, the witness Metz stated that the thought that he was working more time than the company allowed him never occurred to him prior to this suit (R. 975).

However, the clear weight of authority, in my opinion, is to the effect that the defense of estoppel is not good legal defense to an action under the Fair Labor Standards Act. Obviously, one of the primary purposes of the

Act was to protect employees subject to its provisions against entering into agreements as to their wages and hours of employment deemed by Congress to be unduly detrimental to their interests, as a result of their assumed inferior bargaining position. Prior to its adoption, wages and hours were regulated by agreement, and if entry by employees into an agreement inconsistent with the Act were held to constitute a bar to a civil action for its violation, the result is to relegate them to their position under private bargaining outside the Act, and to make it only a moral admonition to employers. And, if direct entry into agreement constitutes no bar, how can acquiescence, failure to object, or conduct falling short of such action effect a legal estoppel?

The courts which have considered the question have adopted this viewpoint, and have held that even a signed statement by an employee incorrectly reciting facts which negative violation of the Act will not bind him. Johnson v. Dierks Lumber Co., 130 F. (2d) 115 (C.C.A. 8); Fleming v. Warshawsky, 123 F. (2d) 622 (C.C.A. 7); United States v. Morley Construction Co., 98 Fed. (2d) 781 (C. C.A. 2); Rigopoulos v. Kervan, 47 F. Supp. 576; Wilkinson v. Noland Co., 40 F. Supp. 1009. Thus, in the Morley Construction Company case, which involved a claim under the related Walsh-Healey Act, the court held void releases signed by employees stating that they had been paid the prevailing rates required by law, when in fact they had been paid lower rates, the court saying (P. 788):

> "The statute was designed to protect them against the economic pressure it was assumed they would be unable to resist, if offered a job. To this end it was as necessary to deny them the power to bargain away their privilege after they had performed their labor as before. * * * We are satisfied that the statute cannot be circumvented by so easy a device."

Of course, some possibility of damage to an honest employer is involved in such a holding, since no matter how faithfully he endeavors to comply with the Act he can never be sure of protection against a claim of violation thought up years later by an employee who has worked with apparent satisfaction. However, while not affording a basis for estoppel, agreement or acquiescence is not without legal significance, since it is important in connection with the problem of proof. Obviously, an employee who has been paid in accordance with his signed statements as to the number of hours he has worked and who claims in litigation that they were not correct is under some burden of explaining why he signed them, if untrue; and the same is true where the employee-plaintiff has worked for years without complaint, despite full knowledge of the law and the practices of the employer. In an otherwise doubtful case, such conduct may swing the scales of decision. This, I think, is the sense of the cases cited by defendant in support of its claim of estoppel. Mortensen v. Western Light & Telephone Co., 42 F. Supp. 319; Dollar v. Caddo River Lumber Co., 43 F. Supp. 822; Stein v. Gordon Bros., 43 F. Supp. 249.

The Master is further inclined to the view that under the principles of the above-cited cases, the Pottery Company's defense of an accord and satisfaction is not well taken. It may well be that even though a general release or acquiescence is ineffective as a bar to a civil action under the Act, the settlement of a bona fide dispute between the parties concerning its application does constitute a bar. Otherwise, the result is to discourage and handicap the parties in the settlement of controversies. In several cases, the defense of accord and satisfaction has been recognized. See Cissell v. Great Atlantic & Pacific Tea Co., 37 F. Supp. 913; Clour v. Jones, 42 F. Supp. 700. However, here the claim of accord and satisfaction is based upon receipts signed by employees for payment of unpaid overtime compensation, resulting from an in-

spection by the Wage and Hour Division. The company had originally averaged overtime over a two-week pay period, and when the Division pointed out that it should have been computed on the basis of single work weeks, adjustment was made with the employees affected. The initiative on this matter was taken by the Division, and it does not appear that there was any dispute over the matter between the employees and the company existing at the time, or any negotiations between them.

D. Inspection by Wage and Hour Division

A defense somewhat related to that of estoppel is that based upon the claimed approval by the Wage and Hour Division of the practice of the Pottery Company with respect to payment of wages and computation of hours under the Act, as a result of an inspection of the plant made in 1939. Plaintiffs objected to testimony on this point on the ground of immateriality and hearsay, but as the issue was raised in the pleadings testimony was taken subject to determination of the legal question after the trial. There is some divergence in the testimony submitted on the point. There is no question but what a thorough inspection was made and employees interviewed, and that the inspectors found the company's practices in error in respect to averaging work weeks in computing overtime, resulting in adjustment with employees for the past and modification of the practice in the future. However, the general manager, Mr. Doll, testified that beyond that the inspectors found nothing wrong with the company's practices, but instead complimented it upon the completeness of its records. The testimony of Mr. Reifin, one of the inspectors, does not entirely corroborate this. According to him, he advised Mr. Doll as to the requirements of the law generally, telling him that any time the employees were required to be on the premises was working time; that he advised him of

probable liability under Section 16(b) of the Act and against a "continuation" of any practice where employees are not credited with hours worked; and that he told him it was improper to dock employees fifteen minutes for tardiness unless they were also paid fifteen minutes' time if they worked three or four minutes late, and also found fault with the method of computing time of office workers. However, although plaintiffs seem to argue to the contrary a careful study of Mr. Reifin's testimony indicates that he nowhere states he told the company it was working its employees before and after the established shift periods for which they were credited. This is further evident from a letter written by him to the company on September 8, 1941 (after institution of this suit) in which he referred to information coming to the office that the company was working its employees fourteen minutes in the morning without paying therefor. The letter does not state that the Division finds that the practice was being followed or that it made any such finding in the course of the inspection two years before. It seems likely that if such finding was made as a result of the inspection, the company would have been informed of it or other affirmative action taken, as it seems obvious, as recognized by Mr. Reifin, that such conduct would constitute wilful and flagrant violation of the Act.

However, resolution of this factual controversy is unnecessary, in my opinion, because I am convinced upon further consideration of this question that the inspection of the Wage and Hour Division is irrelevant to the decision of this case. I am unable to understand the theory upon which defendant claims it to be relevant. A finding by the Wage and Hour Division that the company had been guilty of no violation of the Act could no more bind the employees in a civil suit than its conclusion that a violation had occurred would be proof

of the company's guilt. The finding which the Division is claimed to have made was not an interpretation of the Act, which might be entitled to considerable weight in aiding the court to decide the correct interpretation, but rather merely a finding of facts in a particular case. The theory of defendant seems to be that the employees in some way accepted a ruling of the Division approving the company's practices, but there is no evidence to show that the employees were ever informed of the statements made by the inspectors to Mr. Doll, which constitute the only ruling referred to. Consequently, the Master is of the opinion that the claim originally made by plaintiffs that the results of the inspection are irrelevant here is well taken.

E. Authority of Union to Sue

Another defense of the Pottery Company which must be considered involves the claim that the plaintiff Union cannot maintain this action because it has not been authorized, either by its constitution and by-laws or by a meeting of its members to bring it. Defendant, by motion, previously made the claim that the Union, as an unincorporated association, was not a proper party to act as an agent to bring suit under Section 16(b) of the Wage and Hour Act; but the court overruled the motion by its order of June 13, 1941, holding that the Union could represent persons filing written designations. This defense is repeated in the answer filed by the company. The present defense involves a somewhat different point, and would seem not to be foreclosed by the court's order. The claim previously made was that under the law it is not permissible for an unincorporated association to maintain suit as an agent pursuant to Section 16 of the Wage and Hour Act, regardless of whether it has been authorized by its membership to do so. The claim now made is that the Union has not been so authorized,

and, as decision of it depends on evidence, could hardly have been disposed of in advance of trial. (The claim is similar to the one frequently made that a corporate plaintiff has not been authorized by its charter or its board of directors to institute suit.)

However, examination of the answer fails to reveal that the defense in question was urged therein; and, in my opinion must be rejected as not having been raised by motion or responsive pleading, as required by Rule 12(h) of the Federal Rules of Civil Procedure. The company claims that it raised the issue by traversing the introductory paragraph of the complaint, which commences with the language, "Now comes the plaintiff." It would be stretching language too far to hold that such denial covers this defense. The defense is obviously a technical one since no member of the Union is here complaining about its institution of this suit; and, in view of that fact, I think that the company should be held strictly to its answer and this claim be deemed waived.

## ISSUES RELATING TO SUBSTANTIVE PROVISIONS OF ACT

Assuming, therefore, that the plaintiffs are subject to the provisions of the Wage and Hour Act and have the proper status to bring this suit both for themselves and on behalf of the employees who have signed and filed designations, we come now to the question of whether the defendant Mt. Clemens Pottery Company has been guilty of any violation of the Act. The Act, of course, has two main objects, apart from its child labor provisions: (1) to set minimum wages; (2) to require extra compensation for employment time over a certain number

of hours per week. The declared policy of the Act is to eliminate conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers. In addition, it appears that the Act has an undeclared purpose, namely, to discourage employment for longer hours than forty per week and thus spread the work around.

Apart from exceptions which need not be noticed here, the minimum wage is set at 25 cents an hour for the first year after the effective date of the Act (October 24, 1938), and at 30 cents an hour during the following six years. Under Section 7 (a), the maximum limitations upon employment at straight time is set at a workweek of forty-four hours during the first year of its operation, forty-two hours during the second year, and forty hours thereafter, with the requirement that employment in excess of the specified hours must be paid for at not less than one and one-half times the regular rate of pay.

It may be noted here that the unit for purposes of overtime computations is the single workweek. Overnight Motor Co. v. Missel, 316 U.S. 572, 86 L. Ed. 1159; and under an administrative interpretation the same is true with respect to minimum wages, Wage Hour Manual (1942 ed.), p. 184. This works both ways; higher wages than the minimum or fewer hours of employment than the statutory period during one week cannot be offset by wages below the minimum or hours above the limitation on straight time the following week; on the other hand, wages can fall below the minimum for a given hour so long as the average for the week exceeds it, and more than eight hours can be worked in a given day without liability for overtime so long as the week's total falls short of forty.

The plaintiffs' claims of violation here involve both branches of the Wage and Hour Act. The principal is-

sue relates primarily to overtime, and involves the propriety of the company's method of computing working time of the employees, which the plaintiffs claim gave them credit for less time than they worked and was designed to cheat them out of overtime. There is also an incidental minimum wage angle to this claim, because those few employees who were purportedly being paid by the company at the exact statutory minimum were actually receiving less than the minimum if they were working longer hours than credited to them. In addition, a direct issue of minimum wages is involved in the claim that women employees were paid less than the minimum. With the other two issues, relating to unauthorized pay roll deductions and charity work, a serious question is involved of whether any claim properly referrable to the Wage and Hour Act has been presented by plaintiffs.

A. Computation of Working Time

Under the law, as stated, employees subject to its provisions are entitled to payment for their employment in excess of the designated statutory period at a rate not less than time and one-half their regular rate of pay. There is no question but what employees are entitled to full credit for the time they have worked. Obviously, however, difficult legal questions can arise in determining whether a particular activity of an employee constitutes employment time. While legal questions as to what constitutes working time are involved in the claim presented here, the principal issue is factual. Specifically, plaintiffs' claim of improper computation of such time has two aspects. First, there is the charge, indicated in the plaintiffs' pleadings and reiterated by counsel in arguments in open court, that the company cheated its employees out of approximately fifty-six minutes per day working time by requiring them to work fourteen extra minutes beyond the time credited to them at the start of the shift, on going out for lunch and returning therefrom, and at the

end of the shift. In the alternative, it is contended that even if that claim is not sustained, at least the full time the employees were in the plant as shown by the entries punched on the time clock cards should have been, but was not, credited to them, since they were required to go directly from the time clocks to their respective departments and immediately thereafter to work. Plaintiffs concede, and in fact rely upon, the accuracy of the time clock cards, with a limited exception to be considered under the heading of charity work.

On the other hand, the company claims that its employees were neither required nor permitted to commence work until the established starting time for their respective shifts, from which their working time was computed, nor to continue to work after the quitting time for lunch or at the end of the shift; and that in fact they did not do so. According to defendant, the employees were given a fourteen minute period to check in and out at the time clocks before and after each shift and in going in and out for lunch. It is claimed, however, that while they were permitted to come in fourteen minutes early, they were under no compulsion to do so, the only requirement being that they be at their place of work, ready to work, at the established starting time, and their time being their own until then.

In addition, it is contended by the company that even if it should be found that employees worked before and after the regular shift periods, no judgment can be rendered for plaintiffs because the amount of working time not credited to each employee can not be computed, except upon the basis of speculation and guesswork; and that there is no evidence in the record upon which a recovery for employees not represented here can be predicated; and that even upon plaintiffs' theory of computing time according to the time card entries no overtime was worked in many, if not most, weeks worked by its employees.

1. *Organization of Defendant's Plant and Background Facts in Regard to its Time-Keeping Methods.*

In order to appraise the testimony on the controversial issue thus present, some understanding of the organization and manufacturing processes of the Pottery Company and the undisputed facts relative to its methods of keeping track of its employees' working time is essential. The company is engaged exclusively in the manufacture of dinnerware, including cups, saucers, and dishes of various sorts for household use. It concentrates upon the low-priced trade, and accordingly makes use of mass production methods to a considerable degree. Its Mt. Clemens plant is the only one owned by it, and is the largest single plant in the industry.

Dinnerware consists essentially of a base of clay composition covered with a glass coating, to which decorations may or may not be applied, the whole being hardened by heat. In the manufacturing process followed by the defendant company during the period in litigation, the clay was first mixed with water and other materials in the so-called slip house, from which it emerges in a plastic or putty-like form. This material is then taken into the clay shop, a large department, where it is formed into the particular shapes of ware desired. This is done by a crew of three persons working together, known as the batterout, jiggerman, and finisher. The batterout rolls out the clay like a pie crust and places it on a mold. The jiggerman then puts it in a machine in which it is spun underneath a tool which he presses down upon it to form the desired shape of ware. After being baked in mangles to make it semi-hard, the rough spots are then smoothed off by the finisher, who also sponges its face. Of the three members of the crew, the jiggerman is the most skilled and highly paid employee, while the finisher is the least skilled, the position being filled with female employees. It appears that within recent years, the defendant has been installing automatic jiggering machines, manned by

a crew of 20 to 25 persons, to do the job done by the jiggerman, batterout, and finisher, and some of these machines were in operation during the period in litigation.

After being formed in the clay shop, the ware is then stacked in box-like conveyors known as "saggers" (the dimensions of which are about a foot and a half in each direction), which are transported on a conveyor belt and then loaded into cars, which in turn carry the ware through the bisque kilns. These are large continuous kilns in which the ware is gradually heated to a high temperature and cooled to make it hard. In this form, it is known as bisque ware, and is in a hard but rough condition.

After removal from the bisque kilns, the ware is taken to the brushing and dipping department, where the glaze coating is applied. This work again is done by a crew of three persons—brusher, dipper, and sponger. Dirt and other impurities are first brushed off, and the ware is then dipped in liquid glaze. Part of this dipping is done by hand and the remainder on large automatic dipping machines, approximately twenty feet in diameter which were being installed during the period in litigation and in which the glaze was applied by spraying. The final operation consists of sponging off the surplus glaze.

Following these operations, the ware is again stacked in saggers, which are transported along a large automatic conveyor system known as the glost belt to the glost kilns. The saggers are loaded by girls at loading stations, being temporarily pushed off the belt when empty by men in the department and put back on when filled. Near the glost kilns, the saggers are removed from the belt and placed in cars, which are transported gradually through the glost kilns, where the glaze surface is hardened by heat, the process being essentially the same as that in the bisque kilns already described. The saggers are then put back on the belt, and are moved along it to an unloading point. After inspection and grading, some of the ware is

packed for shipment in its undecorated condition as plain ware; the remainder is transported to the decorating department for decorating. The principal decoration applied is a floral or similar pattern, put on by the decalcomania process. In this process, girls first apply a varnish coating to the ware, then place thin sheets of paper on which the patterns are printed upon it and press them down with brushes to effectuate a transfer of the pattern to the ware. Afterwards, the ware is heated in small decorating kilns to fix the pattern permanently upon it. A second type of decoration which is sometimes applied consists of a thin gold stripe around the rim, which work is done by girls known as "liners." After decoration, the ware is then ready for shipping.

The Pottery Company employs an average of approximately 1200 persons. Altogether, there are approximately ten or twelve departments in the pottery plant, there being in addition to those mentioned several auxiliary departments, such as those in which molds and saggers are manufactured and glaze mixed. To a large degree, the operations are of a continuous nature, and material in process cannot be held over until the next day except at certain stages. Of the departments in the plant, four—the clay shop, brushing and dipping, glost belt, and decorating departments—are directly represented by the witnesses who testified for plaintiffs here.

More than 95 per cent of the employees in the plant engaged in production work are compensated upon a piece work basis. The rate is generally based upon the output of a group or crew, but in departments where employees work individually it is based upon the output of the individual. The incentive principle dominates the methods of payment adopted, so that, for example, the person performing the immediately preceding operation is not paid for pieces which fail to pass inspection, although imperfect ware is disposed of by the company at reduced prices.

The Pottery Company operates generally on a five-day week, with its workweek commencing on Wednesday. Departments variously operate one, two, and three shifts per day, with the bisque and glost kiln departments operating on a three-shift, seven-day, round-the-clock basis. Shifts in the different departments begin at different times during the morning, the established starting time, however, always being on the even quarter hour. The starting times and lengths of the shifts are varied somewhat, depending upon the demands of production.

The plant of the Pottery Company covers more than eight acres of ground, and the employees' entrance is at the northeast corner. Immediately adjacent to the entrance are cloak and toilet rooms for men and women, where outer garments are hung. Upon entering the production part of the plant, employees must pass and punch a time clock. There were two time clocks at different locations in the plant during practically all of the period in litigation (October, 1938, to April, 1941), a third one being added at one of the locations shortly before this suit was commenced. In checking in and out at the clocks, an employee removes his card from the rack, places it in a slot, pushes down a hand lever, and removes his card with the time recorded upon it and places it in another rack. On the average, approximately 25 employees can check in or out per minute in this way. After punching the clock, the employees proceed by a series of more or less defined aisles to their particular places of work. The distance from the clock to the place of work varies from 130 to 325 feet in the case of the glost kilns to 820 to 890 feet for the mold department.

The time clock system was first installed by defendant in 1933. Under the practice then adopted and continuously followed since, employees are not permitted to punch their cards more than fourteen minutes prior to the time the company calls the starting time. In computing

the time worked by the employees, the time cards are removed from the racks, and the time figured from the succeeding even quarter hour after employees ring in to the quarter hour immediately preceding the time they punch out. Thus, for example, an employee whose card is punched in at 6:46 A.M., out at 12:03 P.M., in at 12:58 P.M., and out again at 4:07 P.M. is credited with eight hours working time. The resulting figure is entered on the card in the right-hand column and the card returned to the rack. In computing overtime pay under the Fair Labor Standards Act (when overtime has been worked) the method which the company has followed is to divide the gross pay received by the employee in each workweek by the number of hours credited to him, and the resultant average hourly rate is multiplied by time and a half for the overtime hours. This is in accordance with the system prescribed by the Wage and Hour Division of the Department of Labor. (This, of course, is apart from the practice followed for a time of computing overtime on a two-week basis, which was the subject of adjustment.)

Due to the fact that the shifts in the different departments started at different times in the morning there was no whistle to signalize the commencement of work on most shifts, but clocks belonging to the employees were distributed liberally throughout the plant. Whistles were blown at 6:55 and 7:00 A.M. (which appears to have been the most common established starting time in the morning), and at several other times during the day.

At the time the Wage and Hour Act took effect, the policy was adopted by the company of keeping the working hours of its employees (as computed according to the company's system) below the statutory limitation for payment of straight time, as far as possible. It appears that the management felt that in view of competitive conditions, the company could not afford to pay large amounts of overtime. Prior to the passage of the Act, the

company had been officially on a forty-five hour week, although because of insufficient demand for its products and the policy of spreading the work among its employees in place of laying some of them off, the weekly working hours of the employees (as computed by the company) were generally considerably less than forty-five. When the Act became effective and each year thereafter when the statutory period for straight time was reduced to forty-two and forty successively, working schedules were re-adjusted and additional employees hired. The matter of compliance with the Act was frequently discussed at weekly foremen's meetings. The employees of the company were informed of the policy adopted by it, and were instructed when possible to keep their hours below the statutory period. The employees testifying on behalf of the plaintiffs were all very familiar with this policy of the company; as well as with the general requirements of the law. However, throughout the period in litigation, a few employees (averaging approximately ten to twenty per week) worked overtime, even under the company's method of computation, and were paid for such overtime in accordance with the system heretofore described.

Practically all of the workmen in the plant had certain duties to perform after arriving at their departments previous to the commencement of actual production, which has been referred to in the record as preliminary work and which is the subject of much controversy. Two kinds of activity are embraced under this heading: (1) personal preparations, such as putting on aprons or overalls, removing shirts, taping or greasing arms, putting on finger cots; (2) activity of a non-personal nature, involving the preparation of equipment for commencement of production work, such as turning on switches for lights and machinery, opening windows and assembling and sharpening tools. The nature of this work varied from department to department and from job to job within the department. For example, the preliminary work of the

dippers consisted generally of greasing their arms, putting on aprons or overalls and finger cots, and stirring the glaze solution. The girls engaged in decal work before starting on production would generally put on aprons, fill containers with varnish, bring ware to their benches, and clean their brushes. With the jiggermen, the principal preliminary job was to bend and sharpen a tool known as scrapper, although in addition they turned on switches, put on aprons, and on some occasions would have to get a pail of water for the finishers, get a board of clay, or move a truck. (There is some dispute about the latter activities, and it appears that other employees were regularly hired to get the clay and water.) In the glost belt department, it does not appear that the employees performed any preliminary duties, other than personal.

2. *Industrial Custom in Use of Time Clocks*

Before direct consideration of the testimony on the question of working time, since the time clock cards are the basis for plaintiffs' claim here and since it appears that there is a fairly definite system followed in industry generally with respect to time clocks, in the light of which defendant's system must have been established, a brief statement should be made as to the general custom of industry in recording employment time. The testimony on this point, which includes that of two witnesses familiar with such practices testifying for defendant and Mr. James Wishart, Research Director of U.A.W.-C.I.O., testifying for plaintiffs, is in almost complete agreement upon fundamental points. From this testimony, it appears that practically all manufacturing organizations in this region of any consequence employ a time clock system. The practice followed practically universally in such plants is to have certain established periods for working shifts and for lunch time, with the time clocks open for a fixed period of time (generally fifteen minutes or one-half hour) before and after the shifts, during which employees

can punch in or out. Usually, some employees will be waiting at the clock to ring in at the time they are opened; the remainder will come in gradually up to the time the shift starts. If an employee arrives early in his department, his time is his own until the regular starting time. The punched entries on the time cards show the time the employees enter and leave the production part of the plant, but do not show the time they commenced and stopped work; and the time worked is not computed directly according to these entries, since it is obvious that they will practically always show more time than is actually worked. Instead, if the punch-in time is prior to the beginning of the shift it is assumed that the employee started work at the regular starting time, and a corresponding assumption is made with respect to quitting time. (It appears that in some plants, time clocks are used in connection with a "job-card" system to show the actual time work is started and stopped on each successive job, but such a system is not involved in any way in this case.)

An example of the operation of the typical time clock system is found in the testimony of Earl Larimer, one of the employee-witnesses for plaintiffs, who stated that he was presently employed at a large Detroit plant operating under a collective bargaining agreement with the U.A.W.-C.I.O.; that he was there permitted to ring in a half hour before starting time; and that he regularly arrived and rang in a half hour early, waiting for the starting whistle to commence work and his time being figured from the starting to the quitting whistle.

It appears that, in the pottery industry generally, the use of time clocks is quite limited, the general practice being for the foremen in each department to record in a book the time, the number of hours worked each day by each employee. A similar system was followed by the Mt. Clemens Pottery Company prior to the installation of the time clocks.

### 3. *Evidence on Working Time of Defendant's Employees*

We come now to consideration of the evidence directly bearing upon the question of the time worked by employees of the pottery company. The testimony on this subject consisted of that of eight employees who worked in four different departments, testifying on behalf of plaintiffs, and of the foremen in these departments, and three managerial witnesses (Charles E Doll, and his two sons) testifying for defendant. No employees not connected with the plaintiff Union or the management were produced to testify by either side. The record evidence is limited to the time clock cards of the employees since November, 1939, and certain earning records and computation sheets based thereon.

#### a. *Summary of Testimony*

The testimony of plaintiffs' witnesses on the issue was largely confined on direct examination to the procedure followed by them and other employees in commencing work at the start of the shift. Their testimony was quite uniform that they (along with the rest of the department in which they worked) were instructed by their foremen to report in the morning at fourteen minutes prior to the particular quarter hour which the company recorded as their starting time; that they generally rang in their time cards at that time or shortly afterwards; that they then proceeded to walk directly to their department and started to work, attending first to their preliminary duties and then turning to production work. There is some variation on the testimony as to the time they rang in, some (e.g., Trombley) stating they rang in regularly at "fourteen to," while others (e.g., Dacko) stated they were not as prompt as that. On being shown their time cards, the witnesses admitted that they

did not ring in every day at exactly "fourteen to" and sometimes not until five on ten minutes later. There was also some testimony as to certain employees being criticized or sent home for arriving late, even though they arrived before the established starting time.

The foremen and the managerial witnesses (i.e., Charles E. Doll, Jr. and Sr.), on the other hand, testified that the employees were not instructed to report for work at "fourteen minutes to;" but rather stated that the instructions were that they should report at such time as to be in their department, ready for work, at the even quarter hour set for the start of the shift, and that they could ring in any time after "fourteen to." They further testified that production work was not commenced until the established starting time (except in rare instances where employees may have jumped the gun a minute or two) and frequently not until considerably after that time in cases where a crew had to be assembled. It was conceded that in order for employees to be in their departments ready for work by the starting time, it was necessary for them to punch the time clock some minutes previous; and, while an employee ringing in at 7:00 A.M. sharp, for example (where 7:00 o'clock was the established starting time), was given credit from that time as a matter of accounting convenience, he was considered late if he did not arrive at his place of work until one minute or more after 7:00. As hereafter noted, the company witnesses claimed that the employees arriving early largely spent their time in purely personal activities such as visiting.

It was agreed by witnesses for both sides that the time spent in walking from the time clocks to the department was not considered working time by the company and took place prior to the regular starting time, except in rare instances. There is considerable dispute as to the amount of time spent in so walking, however. Of course,

this would depend upon the distance to the particular department. In the case of the glost belt department, one of the nearer departments, employee and company witnesses are agreed the time required was one or two minutes. The estimates of walking time are also in substantial agreement for the brushing and dipping department at about two minutes, with the exception of Anderson, who originally placed it at half a minute. In the case of the clay shop, one of the most distant departments, however, the estimates of employees ranged from one and one-half to three minutes, and of the foremen from six to eight minutes. Unfortunately, none of the estimates were based upon actual clocking of the time in transit.

With respect to preliminary work in the morning, the time required for this would vary with the different departments, with different individuals in the same department, and with the same individual on different days. The estimates of those employees who undertook to estimate the average amount of time taken up by each activity generally placed it at about two or three minutes each day; and according to their testimony it was done immediately upon arrival in the department. It is conceded by the company witnesses that the preliminary duties of a personal nature were supposed to be, and usually were, performed in advance of the established starting time. As to non-personal preparations, the testimony of the foremen in general was to the effect that these either were not done before starting time, or, if they were, occupied only a few seconds or a minute. (A possible exception is that of Starner, who estimated the average time, apparently for both types of preparations, in the clay shop at 1 to 3 minutes.)

There is a sharp conflict in the testimony as to the extent of visiting and other personal activities of em-

ployees prior to commencing work. Those of plaintiffs' witnesses who were asked about it denied that they were permitted to spend time in this way. The company witnesses, on the other hand, testified that most of the time of employees after arriving in the department in advance of the regular starting time was spent in conversation and in such activities as stopping at the drinking fountain or lavatory, relaxing, and indulging in a certain amount of horseplay. The employees, it is said, would sometimes go into other departments to see their friends.

The employee witnesses did not testify generally as to the time production started. On cross-examination, Trombley estimated the time on the average at five minutes to 7:00, and Metz stated that in his department six or seven minutes to 6:00 would be about the earliest it could start, although he also stated that sometimes they did not get started until shortly before 6:00 and sometimes after 6:00. As above noted, the foremen testified that production work was not started until the established starting time.

With respect to the procedure followed at the other three times of day when the time cards were punched—going out for lunch, returning from lunch, and leaving at the end of the shift—practically no testimony was given by plaintiffs' witnesses on direct examination. On cross-examination, several of them admitted rather freely that they did not work fourteen minutes beyond quitting time, but instead frequently stopped production and cleaned up before quitting time, waiting until quitting time to leave. This is in line with the testimony of the foremen. About the only contrary testimony is that of Anderson, who stated that on some occasions his department worked five or ten minutes overtime at noon. Dacko also stated (R. 2086) that his department was generally kept till five

minutes after 12:00; however, his time cards show that on the great majority of occasions he checked out at the clock by five after 12:00 or earlier. Some claim is made by plaintiffs based on the fact that the glost belt department was required to work after 4:00 P.M. on the day when Dacko was discharged (in November, 1941), but there is no evidence that the company credited the employees in that department with working only until 4:00 o'clock on that day.

Testimony was given by Mr. Doll, Sr., and some of the foremen that during the day employees took considerable time off from production (estimated by Doll at 25 to 30 minutes per day) for relaxation, attendance to personal duties, and in engaging in such activity as mixing up soft drinks. It is claimed that the employees were permitted more latitude in this respect then in most plants, since they were paid on a piecework basis and could be counted on not to abuse the privilege. Plaintiffs submitted no testimony on this point, claiming it immaterial.

### b. *Appraisal of Evidence*

#### (1) *As to Claim of 56 Minutes Extra Work Per Day*

In appraising the evidence, we first consider the claim repeatedly made that the employees of the Pottery Company worked approximately 56 minutes more per day than they were paid for. On this claim, analysis of the testimony is unnecessary, because an examination of the time clock cards themselves shows that the claim is not well founded. Plaintiffs have conceded that, with the exception of a limited type of case to be considered under the heading of "Charity Work," the time clock entries accurately reflect the time the employees came in and went out of the production part of the plant; and, in fact, they base their case upon them.

It is true that in many instances the cards of a particular employee show that over a considerable period of time he rang in regularly at approximately fourteen minutes before the time he was credited with starting. Thus, the cards of Nelson Luchtman and Clarence Burgess (cited in plaintiffs' brief as conspicuous examples) show that from November 14, 1939, to February 20, 1940, they rang in nearly every morning fourteen minutes early. Another example is that of Floyd Pearl, whose first eleven cards in evidence contain punched entries every morning at 6:46 A.M., with one exception when he rang in at 6:31. Plaintiffs argue that the consistency of this pattern can only be accounted for upon the assumption of a company practice to require them to report at this time.

Further examination of the cards, however, does not bear out this contention. To take the cards of the three individuals above-mentioned, for instance, we find many entries on the later cards of Luchtman and Burgess as of 6:51, 6:52, and 6:53 o'clock in the morning; while Pearl, although obviously an early arriver, came in far more frequently at 6:48 A.M. than any other time. Inspection of the cards of other employees in evidence reveals a similar situation, except that some were not so prompt in arriving—Dorothy May, for example, although usually arriving earlier, punched in on a substantial number of days at 5, 4, 3, and 2 minutes before the accredited starting time. Further evidence of this situation is seen in the results of an actual count, made by one of defendants' witnesses, of the ring-in-times on the cards of all employees of the Pottery Company reporting for the 7:00 A.M. shift (one of the largest shifts) on three widely scattered dates (Defendants' Exhibits 97, 98, and 99).

These exhibits reveal that the employees came in at a practically uniform rate for the first seven minutes the clocks were open, with a gradual diminution thereafter until by five minutes to 7:00 95 per cent of the employees had rung in.

The inconsistency between the time cards and the claim of 56 minutes extra work per day is much more apparent, however, in the later punched entries on the cards, particularly at quitting time for lunch and at the end of the day. Thus, the first eleven cards of Floyd Pearl referred to above are punched out at noon on the great majority of days within five minutes after the time to which his working time is figured, and this is generally true of the remainder of his cards.

The same is true of Earl Larimer, who checked in quite regularly approximately twelve minutes early in the morning, but checked out for lunch nearly every day within six minutes after the time credited by the company. On four cards of John Metz selected at random (November 7, 1939, March 26, August 13, and December 31, 1940), he checked out for lunch on morning and afternoon shifts on an average of approximately three minutes after the time credited to him. Again, in the case of Mary Sawicki, a striking situation appears with respect to the days she worked on the afternoon shift; her cards from November, 1939 to April, 1941, show that on approximately half of those days she punched out within one minute after the established quitting time at the end of the shift, and the average for the period is considerably less than three minutes.

The examples cited above are isolated, but they demonstrate that there was no practice in existence of working the employees of the Pottery Company fourteen minutes after the quitting time for lunch and at the end of the shift. While the cards of other employees show that time was spent in the plant beyond that credited to them in an amount frequently totaling 35 or 40 minutes, they do not show any definite pattern, either with different employees or the same employees, except that in general the "extra" time represented by the ring-ins is greater than with the ring-outs and that the employees were quite prompt in going out for lunch. They are definitely incon-

sistent with the claim of approximately 56 minutes extra work per day.

In addition to being inconsistent with the time clock cards, the claim is also not supported by the testimony submitted by plaintiffs, as there was no testimony that employees were kept working fourteen minutes after quitting time, but instead some of the witnesses (e.g., Metz and Larimer) stated that they commonly stopped and cleaned up on or before the quitting time.

(2) *As to Claim That All Time Between Punched Entries on Cards Was Working Time*

The claim that all the time between the punched entries on the time cards constituted working time involves more difficulty. It cannot be decided merely from an examination of the time clock cards, because they do not reveal whether or not the time between the ring-ins and the regular starting time was spent in working. While there is a legal angle to this issue to be considered later (involving principally the proper treatment of time spent in walking from time clocks to department and in personal preparations for work), the issue is primarily factual, since the claim depends upon a finding that the employees were required to go to their departments prior to the established starting time and to start to work at once, spending all of such advance time in work for the company, rather than having all or part of it available for their own purposes. There is, of course, a conflict in the evidence on this issue. In appraising the evidence, it must be remembered that the plaintiffs have the burden of proof, particularly where, as here, they have accepted with full knowledge and without protest over a period of years the practices of which they now complain. Full consideration of the direct testimony and the circumstantial evidence on the question leads me to the conclusion that the burden on this issue has not been sustained.

In the first place, the testimony of plaintiffs' witnesses itself is not entirely satisfactory and does not present the clear picture which would be expected or desired to find in their favor. Thus, some of the witneses confined themselves to stating that after punching their cards in the morning they proceeded directly to their departments, and did not even state that they started to work immediately after arrival. This is true of Dacko and Miss Freddle; and the latter in fact stated when questioned (R. 1826) that the red pencil figures at the right of her time cards represented her working time, which is what is claimed by the company.

The witnesses generally testified on direct examination that they came in at "fourteen to" in the morning. This is true of Trombley, Pe l, and Anderson; but their time cards show otherwise, and Anderson, in fact, stated on cross-examination that they couldn't get there at that time and that anyone who said he did was not telling the truth. Trombley's testimony exhibits considerable confusion as to the procedure followed in the morning. He originally stated that he punched in at 6:46, but on cross-examination said that the starting time was 7:00 o'clock and that he was not considered late if in the department by 7:00 (R. 317, 323). On another occasion, he testified that production work in his department was generally commenced about five minutes to 7:00; but this testimony is weakened by the fact that he had no recollection of a factory whistle which regularly blew at this time. Another witness, Mrs. Socia, stated that she was instructed to come in at fourteen to 7:00, but later (R. 1318) said that she and the other employees understood that if they got there by 7:00 they were not late.

Anderson, who was President of the Union and one of the principal witnesses, placed a very low estimate upon the time required for employees in his department to pass the time clock and walk to the department, estimat-

ing the former at 1½ minutes and the latter originally at ½ minute. It appears that there were approximately fifty employees on each shift in his department and about two hundred using the clock at the same time in the morning, which means about eight minutes would be required for all to pass the clock. As to the estimate of walking time, Mrs. Socia, who worked in the same department, placed it at two minutes, which is in line with the estimate of the foreman. Anderson further stated that the glost belt department was usually at work when he passed it in the morning, even when he came in at 6:31 or 6:46, which is inconsistent with the testimony of Trombley referred to above. Finally, Anderson testified (R. 722) that after the first strike at the plant (occurring at the time this suit was started) the employees were told they need only come in by 6:45 or 7:00, instead of fourteen minutes early. This seems inconsistent with the statements of other witnesses for plaintiffs that the system remained unchanged ever since they worked at the plant and with general arguments of plaintiffs as to the continuance of the system.

Similar difficulty is involved in connection with testimony that certain employees were criticized or sent home for coming in late, although they arrived before the established starting time. The principal incident of this sort concerned one Goldie Broniecki, who, according to the testimony of Mrs. Socia, was sent home for tardiness even though she arrived in the department at five to 7:00. Mrs. Socia testified that she was quite sure the incident happened between July and November, 1940, but upon being shown the time clock cards of Goldie Broniecki from November, 1939 to November, 1940, she conceded that it could not have occurred during that period and also stated it could not have occurred subsequent to November, 1940. Mrs. Socia further admitted that she herself had never been criticized for tardiness, although she punched in on occasions as late as 6:53. Mr. Anderson testified

to being criticized by his foreman for coming in late, but on the specific occasion mentioned he stated he came in after 7:00, and was therefore late by any way of figuring. Anderson also testified to an incident involving one Arthur Baxter, who he stated was reprimanded by his foreman when he came in to the department at ten minutes to 7:00, the department having been already working two or three minutes. If on the date in question the time clock was open only at fourteen minutes to 7:00, it seems clear that the department could not have been working at the time stated, since it would take much longer than one or two minutes for the employees to pass the time clock and get to the department alone. It may be that the starting time on the day in question was fifteen minutes earlier than usual, which would make Baxter late under either method of timekeeping.

With respect to the quitting time for lunch and at the end of the shift, there is, as already noted, little testimony by the employees that they worked after the quitting time recognized by the company in its computations. This being so, how can we know in cases where considerable extra time is shown on the cards that the employee did not remain after quitting time to visit with or wait for other employees or for other purposes of his own? In some instances, the witnesses said they stopped work and cleaned up substantially before quitting time. There would seem to be no basis on the record for the conclusion that the employees worked continuously up to the time they punched out.

In addition to the testimony directly relating to the procedure in coming in and going out, there is testimony of some of the witnesses on other points which reflects upon the reliability of their testimony. For example, Pearl testified that on many days during 1939, 1940, and 1941, his time card was many times punched out at 3:29

and in again at 3:31 P.M., in order to cheat him out of credit for a half hour's work, but upon being shown his cards from November, 1939, on he was unable to point out a single instance of that practice. Finally, the fact that the claim of 56 minutes extra per day made by plaintiffs is inconsistent with the record and testimonial evidence casts some doubt upon the correctness of the related claim.

It is impossible within the limits of this report to analyze all or even a large part of the extensive testimony submitted. The Master does not assume, nor intend to imply, that plaintiffs' witnesses were untruthful. It is not surprising that in a matter as bitterly contested as this and involving the problem of recollection of events over an extensive period of time, discrepancies and inconsistencies in the testimony occur. But, by the same token, the court should hesitate to rely upon testimony of an indefinite and often inconsistent nature, in the absence of corroborating circumstantial evidence. Here, however, circumstantial evidence seems to point in the other direction.

The most important circumstantial factor lies in the fact that in three of the four departments which were the subject of direct testimony here the employees worked in groups rather than singly and could not commence production work until the entire group arrived. Thus, in the clay shop, the jiggerman, batterout, and finisher worked as a unit, and it was admitted by plaintiffs that no member of the crew could work more than momentarily on production apart from the others. Consequently, an employee who arrived early had to wait for the other two before doing anything except preliminary work, and must have had time on his hands for visiting and other purposes. As approximately 200 persons passed the time clock at the beginning of each shift in this department,

it would take about eight minutes for all of them to pass the clock, and the last ones could not be in the department until shortly before 6:00 A.M. The witness Metz stated, in fact, that he sometimes did not get started until after 6:00, because they had to wait for one member of the crew to arrive. With the work done on the automatic jiggering machines likewise, a full crew had to be present before work could be commenced. In addition, the machine itself had to be started and the only testimony on the point is that of the foreman in the department, who claimed he started it each day exactly on the hour. (Another difficulty in connection with the clay shop arises from the fact that the department worked two shifts with a fifteen-minute interval in between. Under plaintiffs' theory, an overlapping of working time would result: thus, with an employee on the first shift checking out fourteen minutes early and his successor checking in fourteen minutes early, there is an overlap of thirteen minutes in working time. Yet, Metz testified (R. 927) that there was a shutdown of several minutes between shifts when work stopped.)

A similar situation prevailed in the dipping department, where the crew consisted of a brusher, dipper, and finisher, no one of whom would begin production work till the others arrived. Similarly, with the automatic dipping machines, virtually a full crew had to be present before they could be put in operation, and the machine had to be started in addition. With the glost belt department, this situation was even more striking. Plaintiffs' witnesses themselves testified that the operations on the belt were of such a nature that practically everyone in the department (numbering about 85 employees) had to be present before production work could be begun (and there were practically no preliminary operations in this department). The department operated in conjunction with another department, and approximately 200 employees passed the time clock on the shifts in the morning.

When the time of walking to the department is included and allowance is made for stragglers, it seems evident that this department could not get started much before the quarter-hour, and that those who came in early had time to themselves. It is not unnatural to suppose that the men in the department spent this time in conversation with the girls, as testified to by the foreman.

In the glost belt department, it was also necessary for the glost belt to be started before work could begin. However, although six witnesses testified on this point, their testimony is so conflicting as to when it was started and who started it that it does not help very much in deciding the matter. As I do not rely upon it, I will not attempt to analyze the testimony on this point.

The decorating department was the only one of the four covered by plaintiffs' testimony where the employees worked individually, and here the witness who testified did not say that work was started prior to the quarter-hour.

In the second place, the irregularity in the pattern of the punched entries on the time cards is at of least of negative effect in pointing against the claim advanced. If the cards showed, as was first contended, that the employees regularly punched in fourteen minutes early and out fourteen minutes late, the conclusion could at least be more readily drawn that the employees were required, rather than merely permitted, to come in and go out at that time. But, the cards reveal no such pattern. They show that some employees arrived consistently before others in the same department; that some spent more "extra" time in the plant at noon than at night, and that with others the converse was true. They also show considerable variation with the same individuals at different times. This is pointed out in plaintiffs' brief with respect to Mary Sawicki, who checked out at noon and night

seven minutes earlier on Monday than on Tuesday on the same card. Of course, one cannot say from the cards that she did not spend the extra fifteen minutes on Tuesday in working; but it at least seems less probable that such was the system where the entries on the cards do not follow a consistent pattern than if such pattern were shown.

In connection with this issue, a comparison between the time cards of the employees who testified and those of kiln foremen, boiler firemen, and pressmen in the slip house, whose departments are conducted on the basis of three consecutive eight-hour shifts per day, is instructive. The uncontroverted testimony is to the effect that in these departments the workmen coming in on the new shift replaced their predecessors, and that there was no overlapping of work between them. Furthermore, these employees did not have the same incentive as the others to "jump the gun," as they could not increase their pay by so doing. Nevertheless, their time cards show considerable "extra" time before and after the shift periods, just as with those of the witnesses who testified. They ofter reported 10 to 12 minutes, and sometimes 14 minutes, in advance of the starting time. (See Defendant's Exhibits 100, 101, and 102.)

Similar corroboration is found in the experience of industry generally in the use of time clocks. This is of particular importance in view of the contention of plaintiffs that The Mt. Clemens Pottery Company is the only plant in the country which follows the "gypping" system allegedly in use by it. Yet, it would appear from the evidence that the time clock cards of the defendant do not show any marked differences from those of other companies. Thus, defendant's witness Wright, who stated that in the course of labor relations work he had examined thousands of time cards in different plants (including those operating under collective bargaining contracts),

testified that in most plants in this region the employees are permitted to enter the plant 15 minutes before starting time and that actual studies of time cards in such plants reveal that most cards are punched 14 to 6 minutes before actual starting time, with the greatest bulk of them 14 to 9 minutes before actual starting time. This is closely in line with the experience of the Pottery Company; and after examining time cards of plaintiffs' witnesses, Wright stated that they appeared to be typical of those he had seen elsewhere. He further stated that there was nothing unusual about finding an employee punching in regularly at 14 minutes before starting time over a period of weeks. (This is corroborated by the testimony of plaintiffs' witness Larimer, previously referred to, that he regularly punched in a half hour before starting time at the plant where he was presently employed. As to Pottery Company workers, it appears that often they came in automobiles with those working on an earlier shift, so that they would be ready to ring in as soon as the clock was "opened.") Similarly, plaintiffs' expert witness, Mr. Wishart, stated that in most plants the employees are allowed to come in as much as a half hour before the actual beginning of work and will stand around smoking and gossiping in the interim.

It seems obvious, both from the testimony and general observation and experience, that in a large factory having many employees arriving on the same shift a certain amount of time is necessary to get them in and out of the plant. They cannot all come in and start work the same minute they are permitted to enter. Apparently, general experience, both in plants operated under collective bargaining contracts and those which are not, has found that fifteen minutes is about the minimum time needed to enable the workmen to get in at the beginning and clear out at the end of the shift. If the time allowed were cut too drastically, it might work a hardship on the employees in forcing them to plan their time of arrival more closely and to rush into work.

Finally, consideration of the general conduct of the parties on the two sides of this lawsuit tends to reinforce the conclusion which I have reached. Looking first to the position of the company, there is to be considered the question of its motive to evade the law. This question is important in this case, since if plaintiffs' claim is correct, defendant's actions cannot be explained on the ground of a mistaken interpretation of the law or some other basis consistent with good faith, but rather only on the assumption that it deliberately adopted a system to cheat its employees out of credit for time to which they were entitled. Obviously, if the claim is true, the motive for such activity must have been to save labor costs at the expense of the employees. If the company could have accomplished this objective more easily and with less risk, of liability in other ways, then the likelihood of such a system having existed is diminished. The evidence shows, however, that the company twice a year—at vacation time and at the end of the year—made payments to its employees in addition to their regular piece rate earnings equal to approximately one week's pay each time, pursuant to what is called the "51-52-62 plan." If the company had been trying to reduce its labor costs, would it not have occurred to it to cut out these payments, rather than take the chance of being found guilty of violation of the Wage and Hour Act, with the attendant double liability? (It must be remembered that if the company had figured time according to punched entries on the time cards the increased cost would not have been as great as might seem, since the only increase involved would have been the 50% extra pay for overtime and its employees in many instances were working well under the statutory period for payment of straight time.) Again, the company raised the pay of its employees on more than one occasion during the period in litigation. It also appears that it permitted its employees on occasions to take time off during the day for purposes of their own and to stop work before quitting time. No doubt the defendant did these things to keep its employees

satisfied, in its own self-interest; but could it afford to attempt to develop good will among its employees on the one hand and turn around and incur their ill will by cheating them out of their rights under the Wage and Hour Act on the other?

It is not intended to imply that an employer who has been "good" to his employees can violate the Wage and Hour Act with impunity, or even to intimate that this particular employer has been good to its employees. Rather, these actions of the company are mentioned solely because they seem generally inconsistent with one view on a disputed issue of fact and so aid in its determination, just as the actions of parties after entering into a contract are considered in determining the means of an ambiguous clause, under the rule of practical construction.

The adjustment which the company admittedly made when the Act came into effect, including the reduction of working hours and increase of personnel, should also be taken into account. The foremen were advised of the requirements of the Act and the intention of the company to comply with it, and employees in turn were instructed to keep their hours within the statutory period. Also to be considered, is the likelihood that, if the company had been doing what is charged, it would have used in place of a time clock system the more primitive time-recording system of having the foremen enter the total daily working time of each employee in a time book, which would make proof of "extra" time worked more difficult.

In this connection, defendant places considerable emphasis upon the argument that, if the company could have foreseen the claims here made, it could have adjusted its system to compute time according to the punched entries on the clock, without any appreciable increase in its costs, since it could have further increased personnel and reduced

the working hours of its employees to less than 40 under that system of computation, its plant machinery and equipment being claimed adequate to take care of the increased force of workmen with little additional expenditure. It is contended, however, that this would have worked a great hardship on the employees, since they would have been deprived of the opportunity to work a full forty-hour week and accordingly would have had their earnings cut down. The argument assumes, however, that the rates for piecework would have remained constant, whereas it seems evident that if total weekly earnings had been diminished the employees would at least have demanded, and likely obtained, increased rates of pay. In any event, the company would naturally be reluctant to face such demands. It may be true, however, that total production costs would not rise in proportion to the reduction in hours of work, so the argument may have some, although not great, bearing upon the issue here in controversy.

Turning to the other side of the picture, we find that the employees, although admittedly well acquainted with the company's system of computing their working time and with the general requirements of the Act, did not protest to the company concerning the practice complained of until this suit was instituted. It would seem that if the company were deliberately cheating its employees by making them work extra time not credited to them in violation of the Wage and Hour Act some voice would have been raised in protest. It is fully appreciated that employees are often reluctant to complain of known abuses because of fear of dismissal or poor treatment on their jobs; but it seems improbable that in a large group of employees all of them could be so easily subdued. The record here in fact shows that the employees felt free to make complaints about other practices of the management —for instance, repeated complaints by jiggermen about their being charged for sponges used by the finishers led

to a change in the practice. Where the decision on the question of fact is otherwise doubtful, the lack of objection is certainly of some evidentiary value. Perhaps the true explanation for the conduct of the employees in this respect is found in the testimony of the witness Metz that the fact that the company was working them more time than it was crediting them with never occurred to him before this suit was instituted.

No one of the above-mentioned factors is conclusive, but considered as a whole along with the testimony directly relating to working time, they make it clear, in my opinion, that plaintiffs have not sustained their burden to prove that all the time between the punched entries on the clock was spent in working and that conversely none of the time in advance of the starting time spent by employees arriving early was their own time. I further think that on this record it must be concluded that production work did not regularly commence until the established starting time; and, if in some instances it was commenced shortly prior thereto, it was counterbalanced by occasions when it was started after the hour and by admitted occasions when it was stopped several minutes before quitting time.

On the other hand, it is clear that time spent in walking from the time clocks to their respective places of work and in performing personal preparatory duties came in advance of the starting time. (It is possible that the same is true of at least part of the time spent in preliminary work of a non-personal nature, but for reasons hereafter stated it is unnecessary to decide this definitely.) If, as a matter of law, such time is employment time under the Act, the company erred in not crediting it to employees and may still be liable to them. This leads to consideration of the law on the problem of working time.

*4. Law as to Working Time*

As heretofore stated, the Act says that employees subject to its provisions must be compensated for their "employment" in excess of a specified number of hours in a work week at not less than one and one half times their regular rate of pay. The critical issue is as to what constitutes time spent in employment or working time. The statute itself does not attempt to define the phrase, Congress evidently feeling that no definition applicable to the many types of situations in which the problem arises could be devised which would be helpful. The only statutory definition of any pertinence is that of the word "employ," which is defined to include "suffer or permit to work."

In approaching the problem of interpretation, it is to be noted that the words to be interpreted are not technical ones, and accordingly must be given their ordinary, commonly understood meaning. 59 C. J. 974. In determining this, the practical consequences of adopting one construction or the other must be considered. Since the meaning of any language is based to a large extent upon custom, business practices and customs existing when the Act was passed must be taken into consideration. Of course, as the statute intended to modify business customs in certain respects, they can be considered only to the extent that they throw light upon the meaning of the language used and no effect can be given to a custom inconsistent with the provisions of the statute. The extent to which a particular custom as to treatment of working time may have resulted from a superior bargaining advantage possessed by the employer and accordingly inconsistent with the ordinary meaning of the phrase, in the light of which the statute was drafted by Congress, must also be considered. (In this connection, administrative rulings appear to give

more weight to customs arising from collective bargaining negotiations than otherwise.)

It is obvious that many difficulties will arise in the application of the Act to business situations and in determining on which side of the line many kinds of activities engaged in by employees fall. There are a number of court decisions and a great many administrative rulings of the Wage and Hour Division of the United States Department of Labor (including an Interpretative Bulletin covering the subject generally) on the question of what constitutes working time. The rulings of the Administrator, it may be noted, are entitled to considerable weight, although not binding upon the courts. United States v. American Trucking Association, 310 U. S. 534, 84 L. Ed. 345. The most vexatious problems appear to have arisen on the proper treatment of waiting time and travel time.

It appears that under the law, in place of giving the term a fixed and rigid meaning, a certain amount of latitude is left for employer and employee to agree as to whether a particular activity of otherwise doubtful status is working time or not. There is a practical reason for this, in that many borderline situations arise where reasonable minds will differ as to the proper treatment of the activity in question, and if no such latitude were recognized it would be impossible for employer and employee to reach a good faith agreement as to its treatment without having it subject to being upset by a court reaching a different conclusion long afterwards. The decision of the Supreme Court in Williams v. Terminal Co., 315 U. S. 386, 86 L. Ed. 598, involving the question of whether tips given to redcaps could be treated as wages for purposes of satisfying the minimum wage provisions of the statute, is a case in point. The Court held that, even though in the absence of contract tips were not wages but gratuities to be retained by the employee, it was permissible for

employer and employee to agree that they would be counted as wages for the purpose of satisfying the Act. The case is doubly significant here in that the Court held that a contract to treat the tips as wages arose from the publication of an order by the employer to that effect and the action of the employees in continuing to work in the face of the order.

A similar decision was reached with respect to the meaning of "regular rate" of pay under the Act. With employees hired at a weekly salary, such rate has been held, in the absence of agreement to the contrary, to be the average hourly amount earned each week. Overnight Motor Co. v. Missel, 316 U. S. 572, 86 L. Ed. 1159. However, in Walling v. Belo Corp., 316 U. S. 624, 86 L. Ed. 1166, the Supreme Court held that an employer and employee could by agreement establish a regular rate of pay, coupled with a guaranteed weekly income, which regular rate will differ from the average hourly rate for any week in which less than the guaranteed time is worked. The remarks of the Court on the problem of interpretation are pertinent (p. 634):

> "The problem presented by this case is difficult—difficult because we are asked to provide a rigid definition of 'regular rate' when Congress has failed to provide one. Presumably, Congress refrained from attempting such a definition because the employment relationships to which the Act would apply were so various and unpredictable. And that which it was unwise for Congress to do, this Court should not do. When employer and employees have agreed upon an arrangement which has proven mutually satisfactory, we should not upset it and approve an inflexible and artificial interpretation of the Act which finds no support in its text and which as a practical matter eliminates the possibility of steady income to employees with

irregular hours. Where the question is as close as this one, it is well to follow the Congressional lead and to afford the fullest possible scope to agreements among the individuals who are actually affected."

A recent District Court decision adopting the same principle with reference to the meaning of working time is Walling v. Cumberland & Liberty Mills Co., 5 W. H. Rep. 641.

The Administrator of the Wage and Hour Division has taken the same position with respect to its enforcement policy, stating in repeated rulings that in situations where hard and fast rules as to what constitutes working time are difficult to lay down, any reasonable agreement between employer and employee will be respected. (See, e. g., Interpretative Bulletin No. 13 on "Hours Worked," Paragraphs 7 and 14.) Thus, in the mining industry, the general rule prevails that time spent by miners in getting down the shaft and walking to the place of work underground is part of their working time. Sunshine Mining Co. v. Carver, 41 F. Supp. 60. In bituminous coal mines, however, the custom, as embodied in collective bargaining contracts with the United Mine Workers, excluded this time from working time. The Administrator, in response to inquiries, rules that this practice of computing working time on a "face-to-face" basis in accordance with custom was proper. 3 W. H. Rep. 332; 4 W. H. Rep. 137.

Of course, there is a limitation on the operation of this principle, as an employer and employee could not be permitted to contract that what is clearly working time is not to be considered as such.

It is important to note that there is no requirement in the Act or administrative regulations that a time clock

system of recording employees' time be used by employers. If it is used, it will be given consideration, only to the extent that it reflects the actual time worked by the employees. (Interpretative Bulletin No. 13, Paragraph 3.) While there are no cases on the point, it is generally recognized by the Administrator that, as customarily used, the punched entries on the time cards will reflect more than the actual working time. Thus, an Inspection Field Letter of the Division (defendant's Exhibit No. 113) states that where employees enter their places of employment a short time (15 or 20 minutes) before the regular starting time for their own convenience and not because required or expected to do so by their employer, such periods are not considered time worked, if no work is performed. In matter of Conra Mfg. Co. (2 C. C. H. Labor Law Serv., Par. 38,126), the Administrator held an examiner's finding of overtime based upon punched time incorrect as reflecting more than the actual hours of work. A similar ruling has been made by the Administrator in interpreting the related Walsh-Healey Act. (5 W. H. R. 148) (Cf. Administrator's Opinion Letter, C. C. H. Labor Law Service, Par. 33,152.) No case or administrative ruling has been found computing working time strictly according to the punched time on the time clock cards.

Coming more directly to the question of what constitutes working time, we find that the Administrator has attempted a general definition of working time to include (1) time the employee is on duty on the employer's premises or at a prescribed workplace; (2) time the employee is suffered or permitted to work, whether or not he is required to do so. (See Interpretative Bulletin No. 13.) It is pointed out, however, that specific problems may not be solved by application of this definition and may require special treatment. It is clear, of course, that working time does not necessarily involve manual labor by the employee, but the employer may even be charged with time the employee spends in waiting, if subject to

the control of the employer during such period. Missouri, K. & T. Ry. Co. v. United States, 231 U. S. 112, 58 L. Ed. 144.

The particular issues presented here involve the proper classification of time spent by employees from the time the clock is punched in until production work is commenced, including (1) time taken up in walking from the time clock to the place of work; (2) time consumed in preliminary work; and (3) waiting time, if any. No claim is made by plaintiffs for time antecedent to the punching in of the clock, including travel time from home to plant or time spent in waiting to punch in at the clock. (As to the former, the general rule is that time spent in traveling from home to place of work is not working time, Bulot v. Freeport Sulphur Co., 45 F. Supp. 380; Dollar v. Caddo River Lumber Co., 43 F. Supp. 822. As to the latter, the employer would seem to be obligated to have sufficient clocks so the employees would not be required to wait an unreasonable time to punch in or out. No claim is made by plaintiffs that the time required here was unreasonable.)

Plaintiffs' contention is that the problems of working time can be solved by the application of a simple formula, namely, that it includes all time spent by the employee on the employer's premises at the request of the latter. However, while that may be as good a general statement of the rule as can be devised, it cannot be taken literally. Thus, it is universally agreed that the employer is not chargeable with time allowed the employee for lunch time (assuming no duties are imposed upon him during the period), even though it must be spent on the employer's premises. Sunshine Mining Co. v. Carver, supra. In certain operations, watchmen may be required to be on the premises all day long, yet time spent in sleeping, eating, and relaxing may be excluded from their working time. Perry v. Livermore, 5 W. H. Rep. 876; Johnson v.

Dierks Lumber & Coal Co., supra; Skidmore v. Swift, 5 W.H. Rep. 635; Interpretative Bulletin No. 13, Par. 7. Finally, the suggested formula would include time spent in walking from the company's gate to the time clocks, which plaintiffs themselves do not claim.

Plaintiffs rely chiefly upon two cases, Sunshine Mining Co. v. Carver, supra, and Fleming v. Rex Oil & Gas Co., 43 F. Supp. 950. The Sunshine case is cited on the issue as to the treatment of time walking from the time clocks to the department, that case holding that the working time of miners included time spent in being transported from the surface of the mine to the place of work underground. A similar decision was reached in Tennessee Coal Co. v. Muscoda Local, 40 F. Supp. 4, where the Court pointed out that the trip to the ultimate place of work was unpleasant, time-consuming, sometimes dangerous, and under strict control of the employer.

Defendant claims that the complete record of the Sunshine case shows that the Court was only giving effect to customary practice and that in fact certain time spent on the employer's premises before arrival at the collar of the mine was not included as working time. The contrary practice, in effect, in the bituminous coal mining industry, with the sanction of the Administrator, has been noted. However that may be, the Sunshine case does not seem in point on the issue under consideration in the case at bar, in view of the very different nature of the trip involved. In fact, there seems to be no case precisely on the point. In Bulot v. Freeport Sulphur Co., supra, it was held that time of from 5 to 15 minutes spent by employees between the arrival of motor boats at the company dock and the actual commencement of work was not working time. It appears from testimony of expert witnesses for both sides, as well as from certain collective bargaining contracts in evidence, that the es-

tablished custom in industry is to require factory workmen to be at their place of work, and not at the time clocks, at the starting time. In view of that fact and the further fact that the employees worked with knowledge of defendant's practice not to credit them with walking time from time clocks to department (creating a contract to that effect under the rule in the Williams case, supra), it would seem that defendant's practice in that respect was not improper under the Act.

The Rex Oil case relates in a general way to the question of waiting time. The Court there held that the hours worked by oil pumpers included not only hours they were engaged in manual labor but also hours they were charged with substantial responsibility for the successful operation of the pumps and "including also the periods during which they were obliged to remain on or near the premises to enable them to carry such responsibility properly." The case is typical of those holding that the employer must pay for time spent by watchmen on guard duty, even when not engaged in manual labor. Johnson v. Dierks Lumber & Coal Co., supra. The general distinction established by the cases on waiting time is that it is working time if the employee is charged with duties or is otherwise under control of the employer during the period, but not if the employee is free (and the period is of long enough duration) to spend as he pleases. Travis v. Ray, 41 F. Supp. 6; Thompson v. Daugherty, 40 F. Supp. 279; Southern Ry. v. Black, 127 F. (2d) 280; Walling v. Allied Messenger Service, 47 F. Supp. 773; Walling v. Sun Publishing Co., 47 F. Supp. 180. Insofar as a question of waiting time, before or after the shift periods, is involved in the case at bar, it is a question of fact; and under my findings plaintiffs have not proved that if they came in early enough to have waiting time they were required to do so or were not free to spend such time on their own behalf.

The matter of preliminary work in this case involves more difficulty. There is no good judicial decision on the point. The Administrator of the Wage and Hour Division has ruled (C.C.H. Labor Law Serv., Par. 23,102, 1942) that work clothes are changed on the employee's time when he is free to wear them home, and on the employer's time when they must be changed on the premises, with a tolerance of five minutes allowed for enforcement purposes in recognition of the difficulty of keeping accurate records of the records of the few minutes required to change clothes. With respect to non-personal preliminary duties, the Inspection Field Letter, Defendant's Exhibit 113, makes it clear that the Administrator considers such work as part of the employment time. There is testimony in the record to the effect that the general custom prevailing in industry is to have clothes changed on the employee's time, and that the same is true of certain brief preliminary work, such as assembling tools; and the Appalachian Agreement with the United Mine Workers (Defendant's Exhibit 73) definitely provides that certain work of drivers in harnessing and unharnessing mules shall not be included as part of the day's labor. On the other hand, there is also evidence of a practice of some plants to permit employees to stop work five minutes early at the end of the day to clean up.

Definite determination of this issue is unnecessary, in view of another principle of law which is applicable here. The rule referred to is that which requires that in order for the Court to render a judgment for damages in favor of a plaintiff, evidence as to the amount of damages suffered must be reasonably definite and not based upon mere conjecture. The courts have had frequent occasion to apply this principle in cases under the Wage and Hour Act, since claims for overtime have frequently been made by employees who have kept no records of the time worked by them. Jax Beer Co. v. Redfern, 124 F. (2d) 172 (C.C.A. 5); Bowman v. Pace Co., 119 F. (2d) 858 (C.C.A.

5); Wilkinson v. Noland Co., 40 F. Supp. 1009; Lowrimoore v. Union Bag & Paper Corp., 30 F. Supp. 647; Prins v. Skaff, 47 F. Supp. 430; Mortensen v. Western Light & Telephone Co., supra; Dollar v. Caddo River Lumber Co., supra. While records are not absolutely required, Johnson v. Dierks Lumber & Coal Co., supra, there must be in lieu thereof other reliable evidence from which the amount of overtime work done can be determined with reasonable definiteness.

In the case at bar, if the plaintiffs' claim of 56 minutes' extra work per day is well taken, the amount of overtime can be readily and precisely figured. The same is true if the contention that all the punched time on the cards constituted employment time is correct. On the other hand, a computation of overtime on the basis of a finding that the employees worked more than the time credited to them but less than the time shown by the entries on the cards would on this record be speculative. Plaintiffs' witnesses kept no record of their time, and they admitted that apart from the time clock cards they could not tell on any particular day when they arrived at their departments or commenced preliminary work. The nature of the preliminary activities and the time taken up by them varied with each department, with different employees in the same department, and with the same employees on different days. On this record, neither the amount of time taken up by such activity nor the proportion of it spent in advance of the established starting time can be computed for any given employee with any degree of reliability. (This is wholly apart from the question of counterbalancing time not worked by employees when they quit and cleaned up in advance of the established quitting time.)

Accordingly, in my view of the case, no recovery for plaintiffs can be based upon the claim that time spent in preliminary work should have been credited to them. It

may be noted that even if the amount of such time could be computed and were considered time worked, the amount of any recovery of overtime on that basis would be very small, inasmuch as such time under the most liberal estimates could not have aggregated over one-half hour per week, and in most instances there was a greater margin than that between the weekly working time credited to the employees and the statutory period for payment of straight time.

B. Sub-Minimum Wages

The pleadings filed by plaintiffs charge that all women employees represented in this action were paid sub-minimum wages by the Pottery Company. On the trial, the claim appears to have been restricted to beginnnig women employees, the claim being that for a period of time after hiring, considered as a learning period, a deduction of 10% was made by the company from minimum wages paid to women employees, without obtaining the approval of the Administrator pursuant to Section 14 of the Act. (This section authorizes under certain conditions the payment of learners and apprentices at less than minimum wages.)

The evidence, however, does not bear out the contention. The evidence shows that until the practice was discontinued in January, 1941, or thereabouts, women employees in the decorating department were paid, for a period of approximately ten weeks after hiring, a beginner's piece rate which was 10% less than the rate paid to experienced employees. The reason assigned by the company for this practice is the greater spoilage of ware by beginners. However, the evidence is likewise clear that the girls in the department were guaranteed the statutory minimum wage of twenty-five cents per hour

from October, 1938, to October, 1939, and thirty cents per hour thereafter; and, when their earnings upon a piecework basis fell short of that figure they were paid an hourly rate equal to the statutory minimum. Experienced women employees were getting substantially above the minimum rates. Thus, there is no question of an apprentice rate below the minimum, and no problem arising under Section 14, which might require the Administrator's approval, is involved. As the record indicates that the girls were made acquainted at the time of hiring with the fact that their piece rate would be 10% less than that of experienced workers, the lower rate was their regular rate of pay for the apprentice period, and no question of overtime is therefore involved.

It is true, of course, that if the claim of plaintiff is correct that more hours were worked by employees than the company gave them credit for, then, as a simple matter of arithmetic those who were purportedly being paid at exactly minimum rates actually received slightly less than the minimum. The decision on this issue, however, depends upon whether the employees did work more hours than they were credited with, which question has already been considered.

C. Pay Roll Deductions

1. *Deductions for Tools*

The issue as to pay roll deductions involves primarily the company's practice of requiring its employees to furnish certain tools and equipment used in their work, and to charge the price of such tools against their earnings when purchased at the company store. In addition, plaintiffs complain of a second type of deductions which is made by the company from the earnings of certain

employees to pay for the wages of another employee, referred to as the "invisible man."

There appears to be no material dispute in the evidence over the facts relating to this issue. The supplies which the employees were required to purchase included principally sponges, brushes, scissors, gloves, finger cots, and pails. The company maintained a store from which the employees generally obtained these items, although they were permitted to purchase them elsewhere. When obtained at the company store, they were paid for, in lieu of cash, by a deduction from the piecework earnings of the employee involved, the net figure being entered on the company's records and upon pay roll checks as the gross pay of the employee. The general practice was to have the employer sign a slip when he obtained the supplies from the store; however, in some instances, the foremen procured the supplies for the employees, in which case no slip was signed by them.

In fixing the charge for the different kinds of equipment involved, the company generally made a mark-up over its out-of-pocket cost ranging up to 33 1/3%, the figure which, in the opinion of the general manager, Doll, was necessary to cover overhead and handling expense. According to Doll, the supplies as a whole were sold at an actual loss; and, in exceptioned instances, the charge for certain items was less than the out-of-pocket cost.

The reason for this practice of charging for equipment appears to be largely historical, growing out of established customs in the pottery industry to require skilled workmen to furnish their own tools. A survival of outmoded practices is seen in the requirement that jiggermen purchase sponges used by finishers, which was abolished during the period in litigation as a result of complaints by the jiggermen. It appears that the jiggerman formerly operated in the industry pretty much as a

subcontractor, hiring his own help and materials. The reason assigned for not eliminating the deductions entirely is the fear of greater wastage which might result. It appears quite common in industry generally for skilled workmen to be required to furnish certain of their tools.

The testimony shows that the employees of the company were well acquainted with its practices in charging them for equipment. In general, the items which the employees were required to buy were low in price, and the total deductions were not large in amounts. (Plaintiffs, in stating this claim in their amended bill of particulars, cited the buggies used to transport ware between departments as a typical example of the items charged for. The evidence shows that these carriers cost $50 to $500 each and were never charged to the employees.) A computation made at plaintiffs' request showed that the supplies charged to Dorothy May for the period in litigation totaled $6.34. The total purchases of sponges by all employees was estimated by Mr. Doll at not more than $2,500 per year, and of other supplies at not more than $500 or $1,000 per year.

Plaintiffs claim that the deductions were unauthorized and improper under the law; and that the company made profits at the expense of its employees which it should be compelled to disgorge. Defendant claims that the deductions were not deductions from wages at all, but just one of the factors involved in their determination, the piecework rates being set at such figure as would enable the employees to earn a reasonable amount after allowance for the cost to him of furnishing tools. Defendant further claims that in any event no violation of the law is involved.

Just how the deductions in question involve any violation of the Wage and Hour Act has not been made clear. The Act says nothing about deductions from wages. As

the employees' gross pay entered was after the deductions were taken and this equalled or exceeded the statutory minimum no question of sub-minimum wages is involved. And since the employees' regular rate of pay was their piecework rate times output minus charges for equipment (which charges were part of the understanding subject to which they worked), and time and one-half for overtime (in the infrequent weeks when it was worked) was figured on this base, the overtime provisions would seem to have been satisfied.

Apparently, plaintiffs rely upon certain regulations promulgated by the Administrator of the Wage and Hour Division pursuant to Section 3(m) of the Act, which defines "wage" to include the reasonable cost to the employer of furnishing the employee with "board, lodging, or other facilities," if customarily furnished by the employer. (See Official Regulations of Administrator, Part 531.) The evident purpose of this provision is to deal with wages paid to employees in other than cash, the term "facilities" referring to such items as food, merchandise, or fuel, which are for the personal benefit of the employee and which he would otherwise pay for out of his own pocket. (Interpretative Bulletin, No. 3, Wage and Hour Division). The Act permits the employer to charge the reasonable cost of such supplies to the employee in satisfying the minimum wage provisions of the Act. The charge thus made can, of course, be stated either in terms of a credit or a deduction.

Under the interpretation of the Act, which has been adopted by the Administrator, tools and equipment used in the employer's business are not facilities, and the Regulations pursuant to Section 3(m) are therefore not involved. The whole subject has been clarified by a recent ruling of the Administrator issued January 13, 1943 (C.C.H., Labor Law Service, Par. 33,212). Under this ruling, deductions for tools can be made by the employer

if, and only if, the deduction does not cause the employees' resulting wage to go below the statutory minimum. Since that result was not produced in the case at bar, the question of profit is not involved—it would seem, in fact, that the employer cannot make deductions for tools which force the wages below the minimum even though he recoups only a fraction of his costs.

Of course, if deductions were made only in overtime weeks or if the deductions were contrary to agreement between employer and employee so that it could be said that the regular rate of pay is the amount earned before deductions, a violation of the overtime provisions of the Act might be involved. Such conduct, however, is not involved in the facts in the case at bar.

2. *Deductions for "Invisible Man"*

The legal problem with respect to the so-called deduction for "invisible man" is substantially identical to that for tools and equipment. The practice complained of is that of charging against the earnings of a particular employee part of the wages of another employee performing a service related to the former's work. The three instances of this practice which were the subject of testimony, all involving charges to the jiggerman, were the deduction for bisque grinding, for inspecting crocked ware, and for wheeling molds. The latter example is typical. The work of removing broken molds which had accumulated in the clay shop was formerly done by the jiggerman as a part of the job. Later, unskilled employees were hired to do this work, and their pay (or part of it) charged to the jiggermen, who were enabled to spend a greater proportion of their time on the more highly paid jiggering work. The amount of this deduction, according to the testimony of Larimer, was about 75 cents every six weeks.

It appears that deductions of this type are not unique with the defendant company, but are common in the pottery industry. The jiggermen who testified showed that they were entirely familiar with the defendants' practice to charge them for the work in question, and worked with that understanding. For the reasons stated in connection with the deductions for tools, I can see no violation of the minimum wage or overtime provisions of the Fair Labor Standards Act in this practice. It may be that a question of business and labor policy is involved which is a proper subject for negotiation between employer and employees, but that question is not before the Court.

D. Charity Work

The claim of "charity work" (i.e., work done by employees for which they were not compensated) was, like the claim for deductions, first raised in the amended bill of particulars. There are two angles to this claim: first, that work was done within the regular time of the employees recorded on the time clock cards, but which was not paid for separately; second, that work was done before the cards were punched in or after they were punched out, which was not only not paid for but decreased the working time credited to them and deprived them of possible overtime.

The principal example of the first type of charity work involves the job of "cutting print," performed by the girls engaged in decal work. The routine operations on their work were to put a coat of varnish upon the ware, moisten a pattern and apply it to the ware, press it down with a brush to transfer the design uniformly to the ware, and remove the pattern. As purchased by the company, the patterns were printed on large sheets of paper

having a number of identical designs. It was necessary for the girls to separate the thin sheet upon which the patterns were printed from the heavy backing sheet to which it was affixed, and then to cut out the individual patterns so that they could be applied individually to the ware. Instead of cutting the print immediately before applying each pattern, the job was generally reserved until a period approximately an hour before quitting time, and enough were cut at that time to fill the estimated needs for the following day. The girls were paid upon the basis of the number of pieces of ware turned out by them, with no separate compensation for cutting the print.

Similarly, as will appear, certain employees were required to do certain work such as loading and unloading saggers and changing molds without separate compensation therefor.

Plaintiffs, however, do not point out how a violation of the statute is involved in this practice. So long as the wages paid averaged an amount equal to or in excess of the statutory minimum per week (which it appears they did) it would seem that the minimum wage requirements were satisfied. And, since it is undisputed that the regular rate of pay of the employees was based on the number of pieces produced and did not include separate payment for the work in question, no violation of the overtime provisions seems involved.

Apart from the Act, it seems clear that when employees are paid on a piecework basis, the rate which is fixed practically always covers a group of operations, including preliminary operations, incidental to turning out a particular piece. If the practice had been for a single pattern to be cut by the girls at the time each item of ware was processed, the method of payment would be recognized as proper; and it would seem that it does not

become improper merely because the work is saved up till the end of the day. It may be that where the work is more indirectly related to the productive operations it would be better business policy to pay for it separately; but that is a matter for negotiation between employer and employees and not of the application of the Act. (It appears that in the case of mold changing, the company changed its practice to provide for separate payment for the job.)

An administrative ruling on the point in question was handed down by the solicitor of the Wage and Hour Division, who stated, in response to an inquiry, that no violation of the minimum wage requirements of the Act would be involved where an employee was required to pick impurities from loads of coal without separate compensation therefor, so long as his weekly pay averaged more than the statutory minimum. Wage Hour Manual (1941 ed.) 186.

The second aspect of the claim of charity work does present a question under the Act, because if an employee was required or permitted to do work outside his punched time and the addition of the time so spent to his working time as computed by the company would result in its exceeding the statutory limitation in any week, he should have been paid overtime for such excess time.

Three claimed examples of the type of situation here involved were the subject of testimony. The first two pertained to the glost belt department. It is claimed, first, that on Monday mornings the men in the department were required to come in approximately fifteen minutes before the women employees to load the saggers on the belt and unload cars, and then go out to punch in their cards; and, second, that on Friday afternoons the men were required to punch out and then return to unload the saggers from the belt and do general cleaning work. The third example involved the clay shop,

where it is claimed that jiggermen were required to change and oil molds after punching out their cards.

The evidence submitted by plaintiffs on these claims is not entirely satisfactory. Two witnesses, Trombley and Dacko, testified relative to the Friday afternoon cleanup work in the glost belt department; and their testimony is in conflict on the fundamental point involved. Trombley stated that they invariably punched out first and came back to do the work (R. 151, 190); while Dacko said he punched out *after* doing the work, except on infrequent occasions (R. 1985). (A third witness from the department, Pearl, did not testify on the point. Another unexplained inconsistency between the testimony of Dacko and Trombley may be noted, in that the former stated that the girls came every Friday evening after punching out to do cleanup work (R. 1987); while Trombley said the girls were always done with the cleaning before the men and did not mention any evening work (R. 189)). Trombley's testimony was in substance that the men and girls first punched out at about the same time and that the men then returned to the department to do the cleanup work, which took from 15 to 30 minutes. Strangely enough, Trombley's time cards for the period show that he nearly always punched out on Friday afternoons at 20 to 30 minutes after the girls in the department, and he was unable to offer any satisfactory explanation of this except on the assumption that he did the cleanup work during that period (See R. 245-248, 331). In view of this fact, it seems probable that Dacko was correct in stating that the work was practically always done before punching out.

Trombley and Dacko were also plaintiffs' principal witnesses with respect to Monday morning work. (Pearl and Anderson also testified briefly on this point, although they did not indicate any restriction of the practice to Monday mornings.) The testimony of these witnesses was that they came in fifteen minutes before the usual

starting time on Monday mornings to do the loading work and then went out to punch their time cards at about the same time as the girls in the department. However, the time cards of these men show that until October, 1940, they punched in at about the same time as the girls, and thereafter approximately fifteen minutes earlier. Dacko had some difficulty explaining this fact, although it may possibly be accounted for by the testimony of Trombley that the practice complained of was discontinued about the beginning of 1941. On the other hand, the explanation was offered by the foreman, Stief, and the general manager, Doll, that prior to October, 1940, the men came in at the same time as the girls and loaded the belts while the girls waited; and in that month, due to the reduction in the statutory workweek at that time to forty hours, the practice was changed to have the men come in early to do this work and avoid the necessity of having the girls wait.

The third claim of charity work outside hours—that of changing and oiling molds—was the subject of testimony of two jiggermen, Metz and Larimer. It appears that this job was done practically every week without separate compensation therefor, until about the beginning of 1941 when the company began paying $2.00 for the job. The witnesses testified that this work was frequently done after punching out. Metz, however, stated that this was true only on part of the occasions when the work was done; and he further said that there was no way to tell how much time was spent on it outside the punched time on the cards or even to estimate the proportionate number of times it was done after and before ringing out (R. 1030-2). The foremen in the department, Sterner and Fitton, denied that the employees had ever been permitted to or had done this work after ringing out, although they stated that Metz and Larimer, among other employees, had requested permission to do so in order to get in more production time and increase their earnings.

Considering the nature of the testimony on these claims, it does not seem that plaintiffs have sustained the burden of proof resting upon them, and in the case of the Friday afternoon glost belt unloading the weight of the evidence seems definitely against the claim. However, assuming that the fact has been established that such work was done outside the punched time, still it would seem that the evidence is of such a nature that the court could not make any reliable computation of the additional time worked which was not credited to the employees. According to plaintiffs' testimony, much of this work was done outside the punched time on certain occasions and inside on other. No records were kept by any of the witnesses of the time spent in this work which was not credited to them; and (as was frankly admitted by Metz) there is no reliable way to estimate it. Accordingly, I do not think plaintiffs can recover on this claim. See Feldman v. Roschelle Bros., 6 W.H.R. 117. (It may be noted that even if the amount claimed could be computed, it would probably result in only a small liability, in view of the fact that the time credited to the employees in question was generally 15 minutes or more under the statutory period for payment of straight time.)

A related claim raised in the plaintiffs' amended bill of particulars (Paragraph F), which should be mentioned briefly, is one that certain employees had their time cards punched "out" at 3:29 and "in" at 3:31, to deprive the employees of credit for one-half hour's work. No testimony was submitted on the point in the main case of plaintiffs, but on rebuttal Floyd Pearl testified that he was frequently required on Monday and Tuesday in 1939, 1940, and 1941 to punch out at 3:29 and in at 3:31 to keep his time from going overtime (R. 3539). However, on being shown his cards beginning with November, 1939, he admitted that they did not contain any such entries. Consequently, the claim has not been substantiated.

## CONCLUSION

There are other defenses raised by the Pottery Company, which have been studied by the Master but which, in view of my conclusions above set forth, I will not report upon, unless requested to do so by the Court. My general conclusion in this case, based upon the law and the record, is that plaintiffs have not established by a fair preponderance of evidence a violation by defendants of the Fair Labor Standards Act, and that the complaint should accordingly be dismissed. I append a brief summary of my findings of fact and conclusions of law.

## SUMMARY FINDINGS OF FACT

1. The employees upon whose behalf this action was brought were engaged in the production of goods for interstate commerce or in occupations necessary thereto.

2. The defendant Pottery Company is a wholly owned subsidiary of the defendant S. S. Kresge Company and the two companies have several identical officers and directors. The Pottery Company, however, has not been undercapitalized, and the Kresge Company has not attempted to interfere with or control the internal management and operation of the Pottery Company, apart from the usual supervision of a corporation exercised by a controlling stockholder.

3. Plaintiffs and the employees represented by them acquiesced in the system and practices followed by the Pottery Company in computing their working time, and made no objection to the management relative thereto prior to the institution of this suit.

4. Employees of the Pottery Company were not required to, and did not, work approximately 56 minutes more per day than the company gave them credit for under the system of computing working time.

5. Employees were instructed to be, and generally were, in their departments, ready to work and with personal preliminary duties performed, by the established starting time.

6. Plaintiffs have not proved they were required to report in advance of said time, that they did work other than preliminary work before the established starting time, or that they worked continuously from the time they punched their cards in to the time they punched out.

7. Certain beginning women employees of the Pottery Company were paid for a time at piece rates which were 10% less than those paid to experienced employees, but if the resultant earnings averaged less than the statutory minimum wage they were paid at the statutory rate.

8. Employees were required to furnish certain tools and equipment used in the business of the company, and when purchased at the company store deductions to pay for them were made from their earnings. The net amount which was entered as the gross pay of the employees was used as a base to compute overtime; and if it amounted to less than the statutory minimum wage they were paid at the minimum rate.

9. A charge was made by the company against the earnings of jiggermen to go toward the payment of wages of certain employees performing services related to the jiggerman's job, including wheeling molds, bisque grinding, and inspection of cracked ware. The net amount, which was entered as the gross pay of the jiggerman, exceeded the statutory minimum wage and was used as a base to compute overtime.

10. Employees were required by the company to perform certain incidental work in connection with their jobs, such as cleanup work, without separate compensation therefor. The total average weekly compensation paid the employees, however, equalled or exceeded the statutory minimum.

11. Plaintiffs have not sustained the burden to prove that cleanup and setup work in the glost belt department or the work of changing molds in the clay shop was done by employees outside the punched time on their cards. Even if sustained, however, there is no reliable way to compute the time outside the punched time spent each week in this work.

## SUMMARY CONCLUSIONS OF LAW

1. Plaintiffs and the employees represented by them are within the protection of the Fair Labor Standards Act, the interstate commerce requirements of the Act being satisfied.

2. Defendant S. S. Kresge Company is not an employer of the plaintiffs or the employees represented by them, within the meaning of the Act.

3. Plaintiffs and the represented employees are not estopped to maintain this action.

4. Plaintiffs and the represented employees are not barred from bringing this suit by an accord and satisfaction with the Pottery Company.

5. The results of the inspection of the Pottery Company's records and practices under the Act by the Wage and Hour Division of the United States Department of

Labor are irrelevant to the determination of this civil suit brought by employees under the Act.

6. Plaintiffs have the burden of proof to show that they spent time in their employment which the company did not give them credit for.

7. Plaintiffs have not established that work was done by them which the company did not credit them for, with the possible exception of preliminary work.

8. A computation of the time spent in preliminary work by each employee each week and not credited to him by the company cannot be made except upon a speculative basis, and accordingly forms no basis for recovery of overtime pay.

9. No violation of the minimum wage or overtime provisions of the Act are involved in the defendant's practices relative to deductions for tools.

10. No violation of the Act is involved in the deductions for the services of other employees charged to the jiggermen.

11. No violation of the Act is involved in defendant's practices relative to payment or non-payment for work incidental to the employees' jobs, such as cleanup work.

12. No violation of the minimum wage requirements of the Act is involved in defendant's practice of paying beginning women employees at lower piece rates than experienced workers, under the facts found here.

Respectfully submitted,

Donald L. Quaife,
Special Master.

Detroit, Michigan,
March 23, 1943.

## OBJECTIONS TO MASTER'S REPORT

(Filed April 2, 1943)

Please take notice that the plaintiffs object to the report of the Special Master herein filed with the Clerk of this Court on March 23, 1943, in the following particulars:

I

Plaintiffs object to the Master's finding of fact numbered 2 on the ground that it is contrary to the evidence in finding that said Kresge Company did not control the operation of The Mt. Clemens Pottery Company. That said finding should have been that the Kresge Company was an employer within the meaning of the Fair Labor Standards Act of 1938 in that it did act directly and indirectly in the interest of an employer in relations to the employees herein.

The record discloses that the Pottery Company has carried the words painted on the water tower to the effect that it was "The Mt Clemens Pottery Company owned by S. S. Kresge Company." (See Master's Report, Page 9, Line 18.) The record discloses that plaintiffs' witnesses stated that the Pottery Company was also operated by the S. S. Kresge Company. (See Master's Report, Page 9.) All of the stock of the Pottery Company was owned by the Kresge Company. (See Master's Report, Page 9.) The Master erred in citing only cases decided under the National Labor Relations Act (See Master's Report, Page 10). The test thereunder is an entirely different one than set forth in Section 1 of the Wage and Hour Law. Objection is also made to statements on Page 10 of the Master's Report, Paragraph 2, to the effect that the Kresge Company is not an employer under the Act and that the issue.

is of relative "little practical importance, since it seems probable from an affidavit of its treasurer on file that the Pottery Company is amply able financially to respond to any judgment which may be obtained by plaintiffs here." There is nothing in any law which states that a company deemed an employer is any less an employer because some other person or corporation is also financially responsible.

II

Plaintiffs object to the Master's finding of fact numbered 3 to the effect that the plaintiffs and the employees represented by them acquiesced in the system and the practices followed by them in computing their working time and made no objection thereto prior to the institution of this suit and plaintiffs state that the Master should have found, first, that the plaintiffs and other employees represented by them herein did object repeatedly to the Company's method of computing their working time and that the employees did make objection to the manager thereto. Plaintiffs further state that under the Fair Labor Standards Act of 1938, it was not necessary for them to object and that if the method of computing working time violated the Act of Congress, no custom or agreement could cancel their rights to such overtime compensation. In this connection, we use the language from the recently decided case of the Tennessee Coal and Iron Company vs. Muscoda, Local No. 123, etc., Volume 6, Wage and Hour Reporter, Page 273, March 22, 1943, wherein the 5th Circuit Court of Appeals said that

> "It may be conceded, arguendo, that for twenty-five years prior to 1938 iron ore miners had not been compensated for travel time and that even after 1938 the parties to this suit had entered into contracts whereby it was agreed that no wages should be paid for travel time; but the very purpose of the Fair Labor Standards Act was to eliminate labor conditions detrimental to the general

> welfare of workers, and the remedial machinery set up to accomplish that purpose regulated hours of work and rates of pay. Industrial custom does not warrant the continuation of abuses that the Act was created to rectify; and no contractual agreement that compensation should not be paid for travel time is valid if in conflict with the Act."

The Master states that

> "Most of the plaintiffs' witnesses, including practically all who testified on the subject, admitted that they had made no complaints to the company . . ."

and that

> "The system had been in effect without change for several years prior to this suit."

(See Master's Report, Page 11, Paragraph 1.) This is in direct conflict with the record. Judge Picard in the case of Anachick vs. Transamerican Freight Lines, Case No. 2830, decided August 17, 1942, stated that the benefits of the Fair Labor Standards Act are available to the organized and unorganized. In this plant two strikes had occurred over the question of the employees being compelled to work without having compensation paid them. Charles E. Doll, Sr., admitted that he called the employees in one by one asking them to drop their claim for overtime. Employees were discharged who refused to work overtime. Even more, complaints had been registered by the employees with the Wage and Hour Division and the Supervising Inspector for the Wage and Hour Division for Michigan actually wrote the Company on September 8, 1941, that complaints had come into his office that the Company was working its employees as much as 56 minutes a day without crediting them therefor and that the Pottery Company was subjecting itself to liability under Section 16(b) of the Act. (See Plaintiffs' Exhibit 91.) In said letter the Division found that the conditions outlined

therein constituted violations of the provisions of the Fair Labor Standards Act of 1938. The Supervising Inspector sought to interview employees privately but the record reveals that he was not permitted to talk to the employees privately as Charles E. Doll, Jr., sat along side listening to what employees said. It was under such conditions that employees did not dare to make too aggressive objections. However, it is submitted that if Congress provided that employees should be paid for time worked that they cannot be estopped from asserting their claims under the law irrespective of coercion or failure to assert the claim. In other words, the employees cannot be estopped from asserting lawful claim for wages.

III

Plaintiffs object to the Master's finding of fact numbered 4 to the effect that the employees of the Pottery Company were not required to and did not work 56 minutes more per day than the Company gave them credit for under its system of computing working time and plaintiffs state that the Master should have found or determined what amount, if any, the employees actually worked overtime as shown by the time cards. The Master states that the employees did not work "56 minutes overtime," although the Master did find (see Page 18, Paragraph 3 of the Master's Report) that "there is no question but what employees are entitled to full credit for the time that they have worked." The time cards indicate that the employees were cheated out of a maximum of 56 minutes a day by the simple process of paying the employees only from the subsequent quarter hour in checking in and to the preceding quarter hour in checking out. The Master does not find what both parties concede, with certain minor exceptions, that the time clock cards are a correct reflection of the working time but the Master simply states that he does not think the employees worked approximately 56 minutes a day without being paid therefor.

## IV

Plaintiffs object to the Master's finding of fact numbered 5 to the effect that employees were instructed to be and were in their departments ready to work and with personal preliminary duties performed by the established starting time and plaintiffs state that the Master should have found that the employees were required to be ready for work at the time they punched their cards and that said employees started to work immediately upon punching their time clock cards. Plaintiffs ask the Court to look at Page 2735 of the Transcript of Record wherein the Foreman, Ernest A. Harms, testified as follows:

> "Q. Do you advise the employees the day before what time they should check in?
> A. I do advise them, yes."

On Page 2442 of the Transcript appears the testimony of another Foreman, Carl Starner:

> "Q. Did you determine the evening before from some source as to what the starting time would be for the next day?
> A. We always knew ahead of time when the starting time would be.
> Q. Did you get that information, Mr. Starner, or did you make that decision. Did you get the information from someone else or did you make the decision as to what time the employees should come in the next day?
> A. Well, it wasn't always just my decision.
> Q. But did you participate in it?
> A. Yes sir.
> Q. And then you conveyed that information to the employees, is that correct, the day before so that they would know?
> A. That is right."

The evidence indicated clearly, therefore, that the employer specified the time when the employees should report

in and the Court will notice in innumerable cases that the employee, for months on end, reported in at 6:31 or 6:46. The employees testified (see Page 1280, Transcript) that they received instructions the night before as to the exact time when they were to report in the morning. The foremen sent girls home for not appearing at the specified time. The Court will notice from Exhibit 39-AA that Goldie Broniecki on December 12, 1939, reported in to work at 6:33 and was sent home. Objection is made to the refusal of the Special Master to allow the government witness, Harry A. Reifin, even to testify as to what he actually observed as to the time worked by the employees of The Mt. Clemens Pottery Company. Although the record reveals that Charles E. Doll, Jr., supervised the process of having persons go through the time clocks and rush to their work, it is important to note that the time cards themselves indicate that an employee reported in under instructions at exactly the same minute almost every day. For instance, the time clock cards of Clarence Burgess indicates that he reported in at exactly 6:31 every day between November 14, 1939 and February 20, 1940 (see Exhibits 82 to 82-G). Nelson Luchtman reported in at exactly 6:31 every day between November 14, 1939 and February 20, 1940 (see Exhibit 83 et seq.). This exacting procedure was followed with only little variance which might have occurred because many employees were required to pass through two time clocks at the same time. Employees who reported as much as five minutes after the fourteen-minute period prior to the time when their pay started were sent home as being late.

## V

Plaintiffs object to the Master's finding of fact numbered 6 to the effect that the plaintiffs have not proved that they were required to report in advance of said time, that they did work other than preliminary work before the established starting time or that they worked con-

tinuously from the time they punched their cards in to the time they punched out and plaintiffs state that the Master should have found that the employees prepared themselves for work prior to punching the time clock cards, that they proceeded to work immediately after punching their time clock cards and that they worked continuously from the time they punched their cards in to the time they punched their cards out. The Master should have found that certain employees were required to and did work Monday mornings for a period of approximately one-half hour prior to punching in their time clock cards.

The foreman, Carl Starner, testified that "We instructed people as to what time they were to start and stop." He also testified that "it was to everybody's interest to get started immediately after punching the time clock because everyone is on piece work." There is no dispute in the evidence that the employees prepared themselves for work prior to the time when they check in. They hung up their clothes, took care of their personal needs and were ready to get to work at the time they punched the clock. This was conceded by all parties to the proceedings. It took a minute or two only for the employees to get into production work from the time they punched their time clock cards, and the Master's finding of fact is thus in direct conflict with the evidence.

## VI

Plaintiffs object to the Master's finding of fact numbered 7 to the effect that certain beginning women employees of the Pottery Company were paid for a time at piece rates which were 10% less than those paid to experienced employees, but if the resultant earnings averaged less than the statutory minimum wage they were paid at the statutory rate. The Master should have found that a 10% deduction was made from the pay of all girls for the first ten weeks that they worked for The Mt.

Clemens Pottery Company, that the Company was not authorized to apply an apprentice rate or make these unauthorized deductions from the employees' pay since no agreement to that effect had been entered into by the employer and employees and in those work weeks when the pay of the employees was less than the minimum the Company should be required to pay the minimum wages accruing. Attention of the Court is called to Exhibit 44 where it is indicated that Alice Stoll and others had their wages reduced 10% for the first ten weeks and that said practices continued at least until January 14, 1941, as indicated in the payroll records of Marie Gosline and Marlyn Corby. The Court will notice also from Exhibit 78 that unauthorized deductions were made from employees' pay, taking the wages below the minimum. The Court will notice that in the case of Dorothy Mae unauthorized deductions in the amount of $6.34 for materials were made.

VII

Plaintiffs object to the Master's finding of fact numbered 8 to the effect that employees were required to furnish certain tools used in the business of the Company. That the net amount entered against the gross pay of the employees was used as a base to compute overtime and that if the same amounted to less than the statutory minimum wage they were paid at the minimum rate. Plaintiffs state that the Master should have found that said tools were a necessary incident of the business carried on and should have been paid for by said Company and that the deductions therefor were improper and illegal.

VIII

Plaintiffs object to the Master's finding of fact numbered 9 to the effect that a charge was made to the Company against the earnings of jiggermen to go towards the payment of wages of certain other employees and that if

the net amount of the gross pay of the jiggermen exceeded the statutory minimum wage, the same was used as a base to compute overtime. Plaintiffs state that the Master should have found that any deduction from the wages of one employee to pay for tools used in another employee's work was improper, illegal and unauthorized.

IX

Plaintiffs object to the finding of fact numbered 10 to the effect that employees were required by the Company to perform certain incidental work in connection with other jobs without compensation therefor or that the total weekly compensation paid their employees equal or exceeded the statutory minimum. Plaintiffs state that the Master should have found that the Company was unauthorized to compel employees to do incidental or other work without compensation therefor and that the Company should be made to pay for all work on or about the premises of the employer performed at the employer's request or sufferance or to the profit of the Company.

X

Plaintiffs object to the Master's finding of fact numbered 11 to the effect that the plaintiffs have not sustained the burden to prove that clean-up and set-up work in the Glost Belt Department or the work of changing molds in the Clay Shop was done by employees outside the punched time on their cards, and plaintiffs further object to the Master's finding therein that there is no reliable way to compute the time outside the punched time spent each week in this work and plaintiffs state that the Master should have found that the plaintiffs have sustained their proof, that the clean-up and set-up in the Glost Belt Department and the work in changing the molds in the Clay Shop was done outside the time punched on their cards and the Master should have found that it was work done

by the employees for the Company, was ascertainable and that the Company should pay the employees therefor.

In this connection the Court's attention is called to Page 54 of the Special Master's Report wherein the Master stated that "In the case at bar, if the plaintiffs' claim of 56 minutes extra work per day is well taken, the amount of time can be readily and precisely figured. The same is true if the contention that all the punched time on the cards constituted employment time is correct." In other words, the time on the time clock cards is easily ascertainable. It should be noted that there was no dispute to the fact that employees in the Glost Belt Department did work on Friday nights after they had punched their time clock cards. Furthermore, there is no dispute in the record that the men in the Glost Belt Department went to work on Monday mornings before they punched their time clock cards in. Nicholas Dacko testified that on June 8, 1942, all of the men in the Glost Belt Department were required to work on Monday morning before punching the time clock cards. There is no denial by the Company witnesses of the allegation that the employees worked on Monday mornings without being paid therefor. Willard Steif, a foreman, told Dacko and other employees to get to the plant on Monday mornings "to unload a car or two just as we told you to do." This refusal to pay men for time worked constitutes a plain fraud upon the workers and the Master should have recognized the obligation of the employer in this respect.

XI

Plaintiffs object to the Master's conclusion of law numbered 2 to the effect that the defendant, The S. S. Kresge Company, is not an employer of the plaintiffs or the employees represented by them within the meaning of the Act for the same is contrary to law and states that the Master should have found that The S. S. Kresge Com-

pany was an employer of these plaintiffs and the employees represented by them within the meaning of the Fair Labor Standards Act. The Special Master on Page 10 of his Report cites some cases under the National Labor Relations Act and does not bother to determine whether the meaning of the term "employer" under the N.L.R.B. Act is the same as that under the Wages and Hour Law. Under the latter, however, any person who directly or indirectly affects the employment relationship is deemed an employer. Particular objection has been made to the Master's finding that whether or not the Kresge Company is an employer is of "relatively little practical importance" because an affidavit is on file that the Pottery Company is able to respond to judgment. This is a highly erroneous conclusion of law and under such a theory a joint tort feasor might be released because another defendant is financially able to respond in damages.

## XII

Plaintiffs object to the Master's conclusion of law numbered 5 to the effect that the inspection of the Pottery Company's records by the United States Department of Labor, Wage and Hour Division, are irrelevant to the determination of this suit brought by employees under this Act and is contrary to law and plaintiffs state that the Master should have found that such evidence is competent and that the Administrator's rulings and findings do have persuasive weight and constituted competent evidence.

## XIII

Plaintiffs object to the Master's conclusion of law numbered 6 to the effect that plaintiffs have the burden of proof to say that they spent time in their employment which the Company did not give them credit for as being contrary to law and plaintiffs state that the Master should have found that the plaintiffs have established by a preponderance of the evidence that they spent time in the

employment of the Pottery Company for which the Company did not give them credit or payment and that the Company should be compelled to account therefor. The plaintiffs specifically call attention of the Court in this connection to the case which the Master did not have available to him at the time he made his conclusions herein and that is, the case of Tennessee Coal and Iron Company vs. Muscoda, Local No. 123 decided March 16, 1943, by the U. S. Circuit Court of Appeals for the Fifth Circuit and found in Volume 6, Wage and Hour Reporter, Page 288. The Court in affirming judgment for approximately $250,000.00 for the employees found that employees should have their time computed from the time when they check in at the portal of a mine. They are to be paid from the time traveling therefrom to their regular work places and the time spent in returning therefrom to the portal of the mine. This decision with its far-reaching consequences has clarified the issue in such a case as this where the Pottery Company did not pay the employees for the time shown on their time clock cards but adopted an arbitrary figure of approximately 14 minutes later than when the employees were checking in. The case has added weight because it set aside the long standing contractual arrangement between the United Mine Workers and the mine owners and compels the employer to include in the computation of a week's work the time consumed each week in traveling from the portal of the mine to the employees' regular places and returning therefrom to the portal at the end of the shift "plus the aggregate of the time consumed each week by such employees in checking in and out and obtaining and returning tools, lamps, and carbide on the surface, or whether they were entitled to have any part of such time included in the working time comprising the workweek." The Circuit Court decided "after considering these and other facts of a similar nature the Court below found as a fact that all of the time consumed was work time and should have been included in the computation of the employees' work week."

The Court held that this travel time was spent on the employer's premises and subject to the employer's directions. That case is exactly parallel to the Pottery Company, which after the employees punched the time clock assigned them to benches near to or far removed from the time clocks. That was a matter that was within the direction of the employer as the Administrator has ruled.

We also call attention to the decision of Judge Raymond of the United States District Court for the Southern District of Michigan, Western Division in the case of Fleming vs. Rex Oil Company, 43 Fed. Supp. 950, that time spent on or near the employer's premises must be paid for. We also submit to the Court the case of Sunshine Mining Company vs. Carver, decided August 27, 1941 (Volume 4, Wage and Hour Reporter, Page 480) where it was held that time spent by employees of a mining company in traveling from portal to portal of a mine is working time for which compensation is due employees under the Act. Federal Judge Cavanah stated that

> "The place designated at the portal of the mine on its premises is the place where the workmen are to appear at a specified time. The workman offers himself there at a specified time and is under the control and direction of plaintiff (mining company) who agrees to designate the place of work and the manner provided by it and who created the situation necessary in operating its mine.
>
> It may be a short distance or a long distance from the portal of the mine and the travel time consumed from the time the workman appears at the portal of the mine and the travel time consumed to their designated place of work and the travel time consumed in returning to the portal of the mine should be considered and included in 'hours worked.' Employment of the workmen under such circumstances, begins when they reach such entrance of the mine."

It should be noted that the Master on Page 32 of his Report stated that "it is true that in many instances the cards of a particular employee show that over a considerable period of time he rang in regularly at approximately 14 minutes before the time he was credited with starting." His conclusion of law and findings of fact to the effect that an employee should not be paid for this time are, therefore, clearly erroneous. The Master states further that "it is conceded by the Company witnesses that the preliminary duties of a personal nature were supposed to be, and usually were, performed in advance of the established starting time," Page 30, Master's Report. We submit that the employees were on the employer's premises, at the employer's request and ready for work when they punched the time clock cards and makes a finding for the employees mandatory. The Court in the Tennessee Coal and Iron case, supra, has held that a contrary custom or even a contract is immaterial, yet the Master in this case permitted the introduction of evidence of not only practices of other companies in this industry but even other companies in entirely different areas and entirely different types of business (Page 26 Master's Report). A substantial part of the Master's Report is based on industrial custom in the use of time clocks (See page 26 Master's Report). There is some confusion in the Master's conclusion on Page 37 of his Report to the effect that he is unable to understand whether the employees between the time indicated on the time clock cards may not have spent time for their own purposes. The language has become mixed and the Master arrives at a conclusion that "there would seem to be no basis on the record for the conclusion that the employees worked continuously up to the time they punched out." Under the Tennessee Coal and Iron case, supra, the Circuit Court has taken a much more realistic view as to what happens when an employee punches in in a modern industrial plant. However, the Master in this case has actually based his reasoning and sets forth the contract which the United Mine Workers had and which was thrown out by the Circuit Court in the

Tennessee Coal and Iron case, supra. It is true that the Master did not have the benefit of this decision when he issued his report. He states, on Page 49 of this Report, "In bituminous coal mines, however, the custom, as embodied in collective bargaining contracts with the United Mine Workers, excluded travel time from working time." This conclusion, the Master will admit, is now specifically set aside by the decision in the Tennessee Coal and Iron case, supra.

XIV

Plaintiffs object to the Master's conclusion of law numbered 7 to the effect that plaintiffs have not established that work was done by them which the Company did not credit them for, with the possible exception of preliminary work, and plaintiffs state that the Master should have found that the employees performed work for which the Company did not compensate them, including preliminary work.

XV

Plaintiffs object to the Master's conclusion of law numbered 8 to the effect that a computation of the time spent in preliminary work by each employee each week and not credited to him by the Company cannot be made except upon a speculative basis, and accordingly forms no basis for a recovery of overtime pay and states that the Master should have found that the work performed by each employee, with minor exceptions, is determinable by examination of the time clock cards and that the employees have not been paid upon such a basis their overtime pay.

XVI

Plaintiffs object to the Master's conclusion of law numbered 9 to the effect that no violation of the minimum wage or overtime provisions of the Act are involved in

the defendants' practices relative to deductions for tools and plaintiffs state that the Master should have found that said deductions violated the provisions of the Fair Labor Standards Act. Plaintiffs point out to the Court that the Master, himself, found (Page 58 Master's Report) that in "fixing the charge for the different kinds of equipment involved the Company generally made a mark-up over its out-of-pocket cost ranging up to 33 1/3%, the figure which, in the opinion of the general manager, Doll, was necessary to cover overhead and handling expense." The Master as a conclusion of law has erroneously determined that the employer has the exclusive privilege of marking up goods sold to employees and profiteering therefrom. The Master also found (Page 59, Master's Report) that "The total purchases of sponges by all employees was estimated by Mr. Doll at not more than $2,500.00 per year and of other supplies at not more than $500.00 or $1,000.00 per year." The Master erroneously states the law to be that "deductions for tools can be made by the employer if, and only if, the deductions do not cause the employees' resultant wages to go below the statutory minimum. Since that result was not produced in the case at bar, the question of profit is not involved." This is entirely erroneous and if this rule is permitted to stand the employer obligated to pay the employee one dollar an hour and time and one-half for overtime can make any profiteering deduction he wishes from the wages even without the consent of the employee if the result is that the employee's wage is not reduced below the minimum. The Fair Labor Standards Act anticipated the danger of employers' profiteering and included therein (Section 11(c) of the Act) that deductions from stipulated wages could be made for board, lodging or other facilities at the cost of the item for which deduction is made. The Master admits and finds as a matter of fact herein that the Pottery Company made a profit of 33 1/3% on the tools, sponges, etc. which it furnished employees.

The finding of the Master to the effect that the employer is permitted to thus profiteer on his employees is an erroneous conclusion of law which if not reversed may lead to other outrageous consequences.

XVII

Plaintiffs object to the Master's conclusion of law numbered 10 to the effect that no violation of the Act is involved in the deductions for the service of other employees charged to the jiggermen as contrary to law and plaintiffs state that the Master should have found that the employer is not permitted under the Act to make unauthorized deductions from the wages of jiggermen or other employees for services rendered the employer by other employees.

XVIII

Plaintiffs object to the Master's conclusion of law numbered 11 to the effect that no violation of the Act is involved in defendants' practices relative to payment or non-payment for work incidental to the employees' jobs, such as clean-up work as the same is contrary to law and the Master should have found that employees should be paid for time spent on employer's premises doing work at the request or sufferance of the employer for the benefit of the employer.

XIX

Plaintiffs object to the Master's conclusion of law numbered 12 to the effect that no violation of the minimum wage requirement of the Act is involved in defendants' practice in paying beginning women employees at lower piece rates than experienced workers under the facts found here as the same is contrary to law and the Master should have found that under the facts found herein the employer is determined to have paid women employees at lower piece rates than experienced workers and the rates

so paid violated the minimum wage provisions of said Act.

The plaintiffs object to the conclusions of the Special Master found on Page 69 of his Report to the effect that plaintiffs have not established by fair preponderance of evidence violations by the defendants of the Fair Labor Standards Act and that the complaint should accordingly be dismissed for the reason that the same are contrary to the facts and law herein and that the Master should have found that upon the basis of the Record the evidence herein, the plaintiffs and other employees represented by them herein have by fair preponderance of the evidence proven violations of the Fair Labor Standards Act of 1938 and that by reason thereof plaintiffs and other employees represented by them herein should be granted judgment and the defendants compelled to account for the sums owing said plaintiffs and other employees represented by them herein.

Plaintiffs by way of objecting to the Master's findings herein point out to the Court the following:

(1) That although the Master has before him evidence of the payment by the Company of a sum of approximately $2,000 in 1939 under the auspices of the Wage and Hour Division, yet said Master has failed and refused to take cognizance of these plaintiffs and other employees that under the provisions of the Act and under the rulings of this and other Federal Courts said plaintiffs and other employees represented by them are as a matter of right entitled to liquidated damages thereon.

(2) The Special Master herein has not found or reported to the Court the method by which the employer has violated the Act herein and failed to pay the employees herein for overtime wages. The Company took the total pay of the employees in any work week and divided it by the number of hours worked. The employee

never heard of the method of computation of his wages until some time after the wages were paid him and at no time were overtime wages paid in accordance with the Act.

(3) The Master has in his report permitted the employer to balance work weeks and even sanctioned the deduction of vacation and other time off as a means of showing that the employees are not entitled to compensation at the rate of time and one-half for hours worked in excess of the statutory number in each work week.

(4) Particular objection is taken to the Special Master's conduct of the hearing and the report filed herein because of his acceptance of evidence of the custom of other industries in computing time worked by the employees and this has appeared particularly erroneous since the Tennessee Coal and Iron decision, supra.

General objection is hereby taken to the acceptance of immaterial evidence by the Special Master and his refusal to permit the plaintiffs to introduce competent and proper testimony proffered at said hearing.

Objection is further taken to the erroneous findings of fact and conclusions of law duly noted at the time of said hearing and appearing on the Transcript of Record herein.

Wherefore, plaintiffs ask that the Special Master's Report may be modified, that the objections herein be sustained, and that judgment be entered on the record herein in favor of the plaintiffs and other employees represented by them herein.

Respectfully submitted,

Edward Lamb,
Counsel for the Plaintiffs, etc.
1014 Edison Bldg.,
Toledo, Ohio.

## MOTION OF DEFENDANT, MT. CLEMENS POTTERY COMPANY, FOR ENTRY OF JUDGMENT ON REPORT OF SPECIAL MASTER.

(Filed April 3, 1943)

Now comes the defendant, Mt. Clemens Pottery Company, by Beaumont, Smith & Harris and Bert V. Nunneley, its attorneys, and makes application to this Court for the entry of a judgment in said cause dismissing the complaint as to The Mt. Clemens Pottery Company with costs to be taxed, in accordance with the report issued herein by Honorable Donald L. Quaife, Special Master, under date of March 23, 1943. This motion is based on the files and records of the court in this cause.

Beaumont, Smith & Harris,
11th Floor, Ford Building,
Detroit, Michigan,
Bert V. Nunneley,
Mt. Clemens, Michigan,
Attorneys for Defendant,
Mt. Clemens Pottery Company.

Dated: April 2, 1943.

## ORDER DISMISSING CAUSE AS TO DEFENDANT S. S. KRESGE COMPANY

(Filed June 15, 1943)

At a session of said court, held in the Federal Building, in the City of Detroit, said District and Division, on this 15th day of June, A. D. 1943.

Present: The Honorable Frank A. Picard, District Judge.

In this cause, the defendant S. S. Kresge Company having filed and presented its Motion to Dismiss the Complaint and Amended Complaint of plaintiffs, which Motion was renewed at the conclusion of the hearing on the merits;

And it now appearing to the Court that the plaintiffs have filed a Motion in this cause for an Order dismissing the cause as to the defendant S. S. Kresge Company with prejudice and without the assessment of costs;

On motion of Frank H. Boos, attorney for the defendant S. S. Kresge Company, it is Ordered that the Complaint and Amended Complaint of the plaintiffs in this cause be and the same are hereby dismissed as to the defendant S. S. Kresge Company, with prejudice and without the assessment of costs, under sub-paragraph (b) of Rule 41.

This dismissal with prejudice applies not only to the named plaintiffs but also to all other persons similarly situated who have made and filed in this cause their designation in writing authorizing the named plaintiffs to prosecute the Complaint and Amended Complaint for and on their behalf.

Frank A. Picard,
District Judge.

## OPINION OF THE COURT

(Filed July 2, 1943)

This is an action brought by certain employees for claimed violation by defendant of the Wages and Hours Act. Plaintiffs, who are piece workers, allege in part that defendant required them to report for work at 14 minutes previous to the hour designated for starting; that invariably they began their labors shortly thereafter but were paid only from the official hour for the opening of the plant. Then in addition to being required to come early it is their claim that they would work 14 minutes after the morning closing hour and only get paid up to noon; 14 minutes before the official time for starting work after noon lunch, being paid from the official hour only and that this same practice prevailed at the closing hour—so that in all plaintiffs allege that they worked about 56 minutes every day for which they received no compensation in computing their overtime.

There are also other differences more or less of a minor nature or individual, among those being the custom of the art, seemingly from time immemorial, that workers engaged in certain features of pottery making must furnish their own sponges and tools; that the company made a profit on the items so sold to help take care of its overhead; and that certain employees, commonly called jiggermen, were required to contribute to the pay of helpers who would take the culls or the blemished work of the jiggermen and by polishing would deliver a piece of pottery acceptable to the standard set by the company.

The matter was referred to a Master whose report was entirely in favor of defendant and the question now is simply whether this Court will approve that report.

In the meantime, following argument and before this Court had an opportunity to pass on the question, plaintiffs voluntarily discontinued as to co-defendant Kresge Company, which they sought to hold as sole stockholder of defendant, The Mt. Clemens Pottery Company.

## CONCLUSIONS OF THE COURT

We will discuss the vital issues categorically and enumerate our reasons briefly for our position.

### 1. Extra Time Not Computed

The first question is whether or not defendant required its employees to report for work at 14 minutes to seven o'clock, for example, starting them practically immediately and then computing their hours from seven o'clock, continuing this practice throughout the day as above enumerated, so that in fact the employees worked approximately 56 minutes every day which were not computed in figuring overtime. It may be explained here that such computation is essential even on piece work since the amount of compensation to piece workers for overtime—according to the Administrator's interpretation—is arrived at by dividing the total amount received in piece work by the number of hours worked in a given work week to get an average hourly wage rate, and then paying time and one-half at this wage to piece workers for all time over 40 hours. (See Interpretative Bulletin No. 4, Wage and Hour Division, United States Department of Labor.)

Naturally if the above claim of plaintiffs is true, some would be working almost 5 hours additional every week, which would have brought many of them into the overtime bracket.

On the other hand the response of the company is a complete denial with the explanation that it usually opened its time clocks for punching at 14 minutes prior to some designated hour so that all employees might have an opportunity to punch the clock, prepare themselves for work (such as wearing special gloves) and so that all would be ready to begin work when the official time arrived.

It is further claimed that pottery in the main is made through the working of groups or crews and by requiring the employees to be ready for active work before the appointed hour each member of the crew would be there at the starting time, work would not be delayed nor an injustice done to the rest of the crew because of some tardy employee's negligence.

This Court, therefore, because of the importance of the issue, instructed that evidence be carefully taken, since if plaintiff's charge was correct we were face to face with a method of employer domination and unfairness that, to say the least, would be most reprehensible, while if defendant's contentions were true this Court would hold that such a rule of the company would not be unreasonable. It must be borne in mind, however, that under no circumstances would it justify defendant in starting, or permitting these employees to work before the scheduled hour. This conclusion is fundamental because it must be apparent that to hold otherwise would permit employers of piece workers to circumvent the objectives of this law and the purpose of the Wages and Hours Act might be entirely frustrated.

On this first point the Master held with the employer and found that the allegations of plaintiffs were not true. Nevertheless, and while in the main agreeing with him, there is sufficient evidence to require more careful scrutiny by this Court of the foundation for this report and

therefore we have re-examined the evidence, paying particular attention to the time cards. Here we noticed what we deem to be significant, to-wit, we found that whenever the starting hour was seven o'clock the punching of the clock did begin at 14 minutes to seven and by nine minutes to seven o'clock 75 per cent of that shift had registered for work. By eight minutes to seven but a few stragglers were left. Undoubtedly those who were unable to punch the clock in the first four minutes could be preparing themselves for work, but the preparation even after punching the clock wouldn't take more than one or one and a half minutes and to the farthest point in the plant from the time clock wouldn't take more than 2 minutes. It is apparent, therefore, that practically every member of the entire shift was ready to work at from 5 to 7 minutes before the hour, and it does not seem probable that with compensation set by piece work, and the crew ready, that these employees didn't start to work immediately. In fact, it appears that this was encouraged by the company as being mutually beneficial.

It was also required by defendant company that certain changes of clothing were necessary at the plant before the employees went to work and on their own time. This is a questionable practice but for the individual in the case at bar this didn't take long—probably one minute to make the change. It appears to this Court, however, that if the company requires certain specified clothing and practically prohibits the employee from preparing for his work at home, that any such rule should be met on company time, because the one minute or two minutes it takes is just as valuable to the employee as it is to defendant company.

Going further into the record we find that the evidence was not seriously controverted that the foremen told the employees when work would start in the morning and when to get there, and when they told them that work

would start at 6:45 o'clock they likewise mentioned the hour of 6:31, or if 7:00 A. M. was the starting time then 6:46 was also designated in some manner.

With this picture before us we cannot help but believe that there was a method in this formula beyond that expressed by defendant's witnesses.

With one thousand employees working every day minutes could grow into hours and hours into days of overtime. To the individual employee it may have meant little or nothing for each day, but in the period of a year it meant hours and to the company a few minutes taken from each employee each day would mean a great deal financially. But in this connection may we not add that there is no evidence, as contended for by plaintiffs, that if the employee didn't get there at 14 minutes to seven he was fired, and there is much testimony to prove that stragglers came in as late as one minute to seven o'clock. And even defendant's witnesses admitted that at times when a crew was ready to work they might jump the gun. In the experience of this Court that's just exactly what would happen 99 times out of 100 on piece work and it was one of the practices that the Wages and Hours Act sought to discourage both on the part of employer and employee. To us it is obvious that in this particular action an attempt was made either by the company itself or by certain foremen in currying favor with the employer, to circumvent the spirit of the Wages and Hours Act.

We are then confronted with the question of whether this Court should lend its aid to a practice that deprives any working man of that which is the only thing he has to sell—his hours or minutes of labor.

We think not—and we hold, therefore, that allowing 5 minutes for punching the clock plus an additional 2 min-

utes to go from the clock to their place of employment, or a total of 7 minutes, should be allowed to defendant as not an unreasonable provision but that all minutes over that time as shown by the time cards in the morning and all over 5 minutes at the beginning of the afternoon work should be computed as part of the hours worked by these employees.

As to punching out at noon and in the evening, we find no evidence that the employees worked after the closing hours either at noon or at night for which they were not paid. This may have happened, but if so it didn't seem to be prevalent and it further appears that both at noon and at night many personal duties might and did occupy the employee's time before he actually punched out.

We cannot hold with plaintiffs that they are entitled to pay right from the minute they punched the clock. Even in the case of Tennessee Coal, Iron and Railroad Company v. Muscoda Local 123 (C.C.A. 5, 1943), 6 Labor Cases, paragraph 61,499, where portal to portal pay was allowed the coal miners, no attempt is made to compensate the miners for changing their clothes and getting their picks and shovels ready for work—all of which took at least 10 minutes. As a matter of fact, if this Court is to rely upon that decision plaintiffs are entitled to nothing here.

### 2. Furnishing Tools

The second point relates to the practice of the company in requiring employees to buy their own tools, particularly sponges, following out an old custom in the pottery industry. The claim of plaintiffs that this practice is unlawful is based upon Section 3(m) of the Fair Labor Standards Act and regulations of the Administrator of the Wage and Hour Division pursuant thereto. Section 3(m) states:

"(m) 'Wage' paid to any employee includes the reasonable cost, as determined by the Administrator, to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by such employer to his employees."

The Administrator has promulgated elaborate regulations as to what constitutes "facilities" within the meaning of this section and the standards and methods for determining "reasonable cost" when the section is applicable. (Official Regulations, Part 531.) Section 531.1(d) of the said regulations states that tools and other materials used in the employer's business are not "facilities" which can be considered in computing wages under Section 3(m) of the Act. But sponges and whatever other tools plaintiffs bought for their own use were not "customarily furnished by such employer to his employees"—as the act provides. On the contrary, these employees have been furnishing their own sponges and tools for years, as we are informed.

This Court is sympathetic with the position of employees on this issue, since it seems only fair that the employer furnish the working appliances used by employees in the operation of his business. Doubtless, the trend in industry is in this direction, and when such practice becomes universal no employer will suffer a competitive disadvantage by following it. While it may be true, as claimed by the company, that employees are less inclined to waste sponges when they must furnish them, still the expected life of a sponge is so well known that employees guilty of abuse of the employer's property can be detected and discharged for cause or otherwise punished. In any event, the possibility of abuse by the laborer is no greater than the possibility of some employers taking advantage of the laborer if so permitted, as is gleaned from the well known fact that a few

years ago in some industries the laborer at times had to buy so much back from his employer that he owed him money above his wages at pay time.

However, the Court is not here faced with a problem of economic policy, but rather with that of interpreting and applying the Fair Labor Standards Act; and careful study of the Act fails to reveal any basis upon which the practices of defendant in making deductions for tools and equipment used in its business can be found to be prohibited. Section 3(m) is not applicable. That section relates to a situation where wages are paid partly in cash and partly in food, lodging, or some other thing for the personal benefit of the employee. Where that section applies, the cash wages may be less than the minimum, as long as the reasonable cost of the facilities makes up the difference. This Court, however, agrees with the Administrator in holding that tools of the trade are not "facilities" within the meaning of Section 3(m) and that deductions for such items cannot be made by the employer if they cause the wages to go below the statutory minimum. However, since it appears here that the pay received by defendant's employees after the deductions for tools and equipment equalled or exceeded the statutory minimum, no violation of the minimum wage requirements is involved. And, since it appears that the employees worked with full knowledge and understanding of the company's practice with respect to their being charged for tools, their regular rate of pay for purposes of computing overtime was the pay after deductions.

No claim is made that the company manipulated the deductions so as to take them only during overtime weeks and thus evade liability for overtime. There appears to be no separate prohibition of deductions in the Fair Labor Standards Act, apart from the minimum wage and overtime requirements, and, for the reasons stated, no violation of those requirements appears. In the case of Wal-

ing v. Peavy-Wilson Lumber Co., 6 Labor Cases, Par. 61,561 (D.C. La. 1943), relied upon by defendant, it appeared that the great majority of the employees were receiving bare minimum wages; and, while the opinion is not entirely clear on the point, it would seem that the Court's holding that the laborers should be furnished tools free of charge was based upon the fact that the charges therefor cut the employees' wages below the minimum.

We wish to add that our decision upon this issue is not based upon the fact that it has been customary practice in the industry to make such deductions, since it is clear that any custom inconsistent with the requirements of the Act must yield to the latter.

### 3. The Jiggermen

The next question before us is that of the jiggermen. Ordinarily we would feel that the jiggerman should not be compelled to contribute towards the wages of another worker were it not for the following facts.

These laborers do the work that the jiggerman should have done. It is work that does not require great experience, nor the adeptness and touch of the jiggerman, who is admittedly the highest paid among pottery workers and an artist in his line. It is only the culls and the possible defective pottery that is turned over to the laborer. He finishes the work. The jiggerman gets paid for it. We believe he should contribute part of the compensation to the man who helps do his work for him. It's an old practice coming down through the years and almost makes the jiggerman an independent contractor. We don't see why we should interfere with this custom or that its continuation is an abuse of either the letter or spirit of the law.

### 4. Other Claims

Many other miscellaneous claims are raised by plaintiffs but to us they appear to be without merit and in these we hold with the Master.

### 5. Double Damages

To the plaintiffs' contention that this Court should give double damages on a prior settlement between the parties we cannot consent. This claim came out of a blue sky without any direct plea being made in the pleadings or at any time in the argument until just before this Court was ready to write its opinion. That settlement was not at issue here. It had been agreed upon long ago and if this Court is to give double damages on a settlement it knows nothing about, the merits of which were never presented to the Court at all and which may have been an entirely voluntary gesture on the part of defendant to avoid litigation, we are opening the door to a lot of prospective trouble. But if this decision results in any additional compensation to the plaintiffs or any of them, of course, double damages will be allowed therefor.

The question of the attorney fees for plaintiff and payment of costs is a matter for settlement by this Court on motion of the parties.

An order consistent with this opinion approving the report of the Master may be prepared for this Court's signature.

(Signed) Frank A. Picard,
United States District Judge.

Dated: ~~June 30th~~ July 21, 1943.

## ~~MOTION TO SETTLE~~ FINDINGS OF FACT, CONCLUSIONS OF LAW AND FOR JUDGMENT

(Filed ~~Aug. 25~~ July 7, 1943)

This cause came on to be heard upon the complaint filed by Steve Anderson, Earl Trombley, Lillian Socia, Albert Watkins, The United Pottery Workers, an unincorporated trade association, and others in behalf of themselves and other employees similarly situated, employees of The Mt. Clemens Pottery Company and the S. S. Kresge Company, the respective answers of the defendant companies, the pleadings, the Report of the Special Master and the evidence adduced by the respective parties hereto.

The parties hereto consenting to trial herein without intervention of the jury, the same was submitted by the Court to a Special Master for the taking of evidence, findings of fact and conclusions of law, and the Court being fully advised in the premises, upholds the findings and conclusions of the Special Master, with the following amendments thereto, and enters judgment thereon for the reasons more fully set forth in the Opinion of the Court filed in this action on or about June 30, 1943.

### FINDINGS OF FACT

The Court in amending the Findings of Fact and Conclusions of Law of the Special Master, finds and enters its judgment herein as follows:

#### I

That Steve Anderson and the other individual named plaintiffs, as well as those employees who have filed their

authorizations herein, were all employees of The Mt. Clemens Pottery Company for the purpose of establishing their claims under the Fair Labor Standards Act of 1938, and that each of said employees were engaged in the production of goods for interstate commerce and were subject to the Fair Labor Standards Act of 1938, and that the Court has jurisdiction of this cause.

II

That each of said employees claimed to have worked as much as 56 minutes every day and that said time was not computed in determining working time. That said claim arose by virtue of said employees being required to report in for work in the morning at approximately 14 minutes to the quarter hour and that the employees were not given credit for working time until the subsequent quarter hour. That said employees in the afternoon likewise claim to have been required to report in at as much as 14 minutes before the quarter hour and that their time was only computed from the subsequent quarter hour. That in leaving said plant at noon and in the evening, said employees claim that they were likewise deprived of credit for the time shown on their time cards except from the following quarter hour.

III

That said employees were for the most part employed on a piece-work basis. That said employees are entitled to compensation even though employed upon a piece-work basis at the rate of time and one-half their regular rate for that time worked beyond and above the statutory number of hours fixed by the Fair Labor Standards Act of 1938.

IV

That whenever the starting hour was seven o'clock in the morning, the punching of the clock began at 14 min-

utes to seven and that by nine minutes to seven o'clock 75% of that shift registered for work, and by 8 minutes to seven but a few stragglers were left. Undoubtedly, those who were unable to punch the clock in the first four minutes could be preparing themselves for work, but the preparation even after punching the clock would not take more than one or one and one-half minutes and to the farthest point in the plant from the time clock would not take more than two minutes. It is apparent, therefore, that practically every member of the entire shift was ready to work at from five to seven minutes before the hour, and it does not seem probable that with compensation set by piece work, and the crew ready, that these employees did not start to work immediately. In fact, it appears that this was encouraged by the company as being mutually beneficial. It was also required by defendant company that certain changes of clothing were necessary at the plant before the employees went to work and on their own time. This is a questionable practice but for the individual in the case at bar this did not take long—probably one minute to make the change. The Court finds that if the company requires certain specified clothing and practically prohibits the employee from preparing for his work at home, that such activity should be met on company time, because the one minute it takes is just as valuable to the employee as it is to the defendant company.

V

The Court further finds, and the evidence does not seriously controvert it, that the foremen told the employees when work would start in the morning and told the employees when to get there, and when they told them that work would start at 6:45 o'clock, they likewise mentioned the hour 6:31, or if 7:00 A. M. was the starting time then 6:46 was also designated in some manner. We believe and find that there was a method in this formula beyond that expressed by defendants' witnesses. It is obvious,

and the Court so finds, that in this particular action an attempt was made either by the company itself or by the certain foremen in currying favor with the employer to circumvent the spirit of the Wages and Hours Act. This Court does not lend its aid to a practice which deprives any working man of that which is the only thing he has to sell—his hours or minutes of labor.

VI

The Court finds and so holds, therefore, that there should be allowed five minutes for punching the time clock plus an additional two minutes to go from the clock to the employees' place of employment, or a total of seven minutes should be allowed to the defendant company in the morning but that all minutes over that time as shown by the time clock in the morning and all minutes over five minutes at the beginning of the afternoon work should be computed as part of the hours worked by these employees. For the purpose of determining the amount of overtime worked by the plaintiffs or the employees represented by them herein, the defendant, Mt. Clemens Pottery Company, shall make a computation of the hours worked in excess of the statutory number fixed by the Fair Labor Standards Act of 1938 and submit the same, together with an account of the wages owing, if any, to each of said employees and file the same with this Court and, if said accounting is correct, the Court herein will enter judgment thereon. Said account shall be filed with this Court within thirty (30) days from the date hereof.

VII

The Court finds that counsel for the plaintiffs have rendered extensive services herein which have been of substantial value to the determination of the issues herein and that under the provisions of Section 16(b) of the Fair Labor Standards Act of 1938, counsel for the plaintiffs

6

is entitled to attorney fees to be paid by the defendant, Mt. Clemens Pottery Company. That judgment accordingly is entered in favor of plaintiffs' attorneys the same to be fixed in the amount of $..... That the amount fixed by way of fees, as aforesaid, is determined to be reasonable in view of the extensive preparation and trial of the issues herein involving approximately several hundred employees and involving more than forty-five full days of actual trial work and more than sixty full days of examination of records, pleadings, time clock cards and other data, that the amount so fixed by the Court herein is the result of evidence adduced upon the motion of the plaintiffs filed in accordance with the instructions issued in the opinion of the Court and filed herein on or about June 30, 1943. That judgment is also granted herein for plaintiffs' expenses, for accounting, bookkeeping and stenographic services amounting to $1000.00.

VIII

That Court costs herein in the amount of $..... are taxed against the defendant and that the defendant should pay the fees of the Special Master in the additional amount of $.....

IX

Under the provisions of the Fair Labor Standards Act the Court finds that in 1939 a sum less than $3,000.00 was paid under the auspices of the Wage and Hour Division of the United States Department of Labor as unpaid overtime compensation accruing to certain employees, including among others, plaintiffs and others represented herein. The Court finds that liquidated damages thereon were not paid. The Court does not find that said employees under the pleadings herein are entitled to liquidated damages on said settlement or the restitution so made under the auspices of the Wage and Hour Division

of the United States Department of Labor in 1939, but the findings herein are upon the basis that said issue was not properly raised herein and said findings are without prejudice to the rights of said employees to assert such claims as may be proper in the premises.

X

The Court, in ordering an accounting upon the basis of the finding numbered VI herein, determines that if compensation is owing to the plaintiffs or any of them, liquidated damages will be and hereby are allowed thereon.

## CONCLUSIONS OF LAW

The plaintiffs and those who are represented by them herein are entitled to recovery from the defendant, Mt. Clemens Pottery Company, the sums found due by the Court herein in its opinion filed June 30, 1943, after an account is furnished by the defendant, Mt. Clemens Pottery Company, which accounting shall be filed with this Court within thirty (30) days hereof and shall set forth the amounts said employees are entitled to, if any, as overtime compensation found to be due under the provisions of the Fair Labor Standards Act of 1938 upon the basis that each employee shall be paid for time shown on their respective time cards after a deduction of seven minutes in reporting to work in the morning and five minutes for reporting to work in the afternoon for all time worked in excess of the statutory number of hours in each of the workweeks since October 24, 1938, as unpaid overtime compensation and for an additional equal amount as liquidated damages. That the defendant pay the Court costs herein in the amount of $..... and attorneys' fees to plaintiffs' counsel in the amount of $....., and plaintiffs' accounting, bookkeeping

and stenographic services in the amount of $1,000.00, for all of which judgment should be and the same is hereby awarded.

It Is, Therefore, Ordered, Adjudged and Decreed that the defendant pay the judgment set forth aforesaid, the Court costs herein taxed at $..... and attorneys' fees to Edward Lamb and Lowell Goerlich in the amount of $....., for all of which judgment is rendered accordingly and that the judgment, orders, findings and decrees herein are made without prejudice to the rights of plaintiffs to file a new action for overtime compensation accruing for the time subsequent to the filing of the complaint herein or for liquidated damages accruing upon or restitution made in 1939 under the auspices of the Wage and Hour Division of the United States Department of Labor.

.....
Judge, U. S. District Court.

Copy of the above has been served on Attorneys Beaumont, Smith & Harris, Ford Bldg., Detroit, Michigan, and Nunnely & Nunnely, Mt. Clemens, Michigan, this 6th day of July, 1943.

Edward Lamb,
Lowell Goerlich,
Attorneys for Plaintiffs.

## MOTION FOR SUPPLEMENTAL AND ADDITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW

(Filed ~~Aug. 25,~~ July 7 1942)

Plaintiffs in the above entitled cause by their attorneys respectfully move the Court to make and enter the following additional (a) special findings of fact and to declare and enter the following additional (b) conclusions of law in said case, to-wit:

### FINDINGS OF FACT

I.

The defendant, Mt. Clemens Pottery Company, required the plaintiffs and other employees represented by them herein to buy their own tools, including sponges, scissors, pails and other articles of employment. That these articles are facilities within the meaning of the Fair Labor Standards Act of 1938 and the Regulations of the Administrator of the Wage and Hour Division made in pursuance thereof. That said tools were used by the employees in pursuance of the business of the employer. That said practice has continued for many years prior to the institution of the action herein. That said Court finds that the employer should furnish the working appliances used by the employees in the operation of employer's business. The Court finds that the employer has violated the provisions of Section 3(m) of the Act and Sections 531.1(d) and other provisions of the Administrator's Regulations and that said deductions were improper and illegal in that they constituted a violation

of said Act and that the employer should reimburse said employees for the tools and other facilities so charged to the employees since October 24, 1938.

II.

The Court finds that jiggermen have been compelled to contribute towards the wages of other workers. That the work performed by said workers was for the sole and exclusive benefit of the employer. That the jiggermen are employees of the employer within the meaning of the Act and not independent employers or independent contractors and the Court, therefore, finds that the employer should reimburse jiggermen for deductions made from their wages as contribution to the wages of other employees.

## CONCLUSIONS OF LAW

I.

In the year 1939 the defendant, Mt. Clemens Pottery Company, made restitution of certain unpaid overtime compensation as shown on Exhibit 29 in the Records of this case which amount accrued to said employees by reason of the defendant's attempt to balance or offset work weeks on a by-monthly basis rather than upon a weekly basis. Since said claim accrued under the Fair Labor Standards Act of 1938, the Court finds that under and by virtue of Section 16(b) of said Act said employees as a matter of law are entitled to liquidated damages in an additional equal amount for which sum judgment is hereby entered.

II.

Under the law and the evidence the plaintiffs are, therefore, entitled to (a) recover from the defendant, Mt.

Clemens Pottery Company, all sums deducted from their wages for tools, including sponges, scissors and pails and (b) the jiggermen are entitled to recover monies deducted from their wages for the purpose of paying wages to other employees and (c) plaintiffs and other employees represented by them herein are entitled to recover from the defendant liquidated damages in the amount of $....., representing monies owing under Section 16(b) of the Act and which sums were paid in 1939, as shown on Exhibit 29 in the Records of this Case.

.....
Judge, U. S. District Court.

Copy of the foregoing Motion for additional findings of fact and conclusions of law has been sent to Beaumont, Smith & Harris, Ford Bldg., Detroit, Mich., and Nunneley and Nunneley, Mt. Clemens, Michigan, counsel for defendant, this 6th day of July, 1943.

Edward Lamb,
Lowell Goerlich,
Attorneys for the Plaintiffs.

## MOTION OF DEFENDANT REQUESTING ADOPTION OF FINDINGS AND CONCLUSIONS

(Filed Sept. 3, 1943)

Now comes The Mt. Clemens Pottery Company, defendant in the above entitled cause, by Beaumont, Smith & Harris and Bert V. Nunneley, its attorneys, and moves that the Court adopt and enter the following findings of fact and conclusions of law.

## FINDINGS OF FACT

1. Except as hereinafter specified, all of the findings of the Master, and the Master's report, are hereby confirmed and adopted as the findings of the Court. The Court further finds:

2. Any time spent by employees before the regular starting time in so-called "preliminary work," as referred to in the Master's report (and defined at page 25 of the Master's report as including (a) personal preparations such as putting on overalls, greasing arms, etc., and (b) activity of a non-personal nature such as turning on switches, opening windows, etc.), was counterbalanced by time lost on occasions when the employees started work after the regularly scheduled starting time or quit before the regularly scheduled stopping time, but were credited with having worked from the regular starting time to the regular stopping time.

3. There is no showing as to when any individual plaintiff started work on any day, and even if the testi-

mony of the plaintiffs could be accepted it would be utterly impossible to form any reasonably accurate estimate of any amount of time worked by plaintiffs, or any of them, before starting time. On the contrary, any estimate that might be made on the basis of the evidence in this record would be purely conjectural and speculative.

4. If any employee started work on any particular day before the regular starting time the extra time so worked was counterbalanced by time taken off during the day and by time lost through quitting work early.

5. This action was brought in the name of Local 1083, United Pottery Workers of America, affiliated with the C.I.O., and in the names of certain officers and members thereof.

6. The principal issue is whether or not the plaintiffs worked longer hours than are recorded on the books of The Mt. Clemens Pottery Company, the employer of the individual plaintiffs.

7. The claim was also made by plaintiffs that some employees performed certain operations for which they were not paid.

8. The final claim of the plaintiffs was based on the fact that The Mt. Clemens Pottery Company sold certain tools, gloves, etc., to employees. The practice of requiring employees to pay for materials so purchased by them was described as the making of "unauthorized deductions" from the employees' pay.

9. Each department at The Mt. Clemens Pottery Company operated on established starting and quitting times, which were changed from time to time to meet requirements of production. Employees were permitted to check in at the time clocks during a period of 14 minutes before

the established starting time and to check out during a like period after the established quitting time. Employees punched in and out during these 14 minute periods, and their hours of work were computed by the company from the established starting time to the established quitting time. There was no requirement that employees punch in at any particular time except that they were expected to be in their department and ready to go to work at the starting time. Employees were not required to punch-in before the regular starting time. If an employee punched in exactly at starting time, he was treated as having started work then. A copy of the company's record as to the number of hours worked by each employee was transcribed on each time clock card daily, and whenever an employee picked up his card he had before him a record of his hours of work as determined by the company, representing at least all the hours the employee worked.

10. The practice of the Pottery Company in this regard is in accordance with the customary usage followed in substantially all plants in this part of the country. The practice has been followed for many years in the Pottery Company and was well understood by the employees. At least until the filing of this action, no objection was ever made by any employees—either individually or collectively—to the correctness of the company's record of hours worked.

11. Approximately 8 to 10 minutes of the 14 minute period were required to permit the employees to punch through the time clock, and usually more time was consumed in doing this. Not more than about 25 employees per shift punched in at 14 minutes to the hour. It took various employees from 2 to 7 minutes to reach their respective departments after punching in at the time clock, the plant covering more than 8 acres.

12. After reaching their departments, employees spent a certain amount of time (depending in large measure on

how early they punched in) in talking and in waiting for their co-workers to arrive. Some of the workers put on overalls or gloves or finger cots, or greased their arms.

13. The punch-in time (i.e., the interval between the moment the time clock was punched and the time work was begun) of employees on jobs where it was physically impossible to start work before the regular starting time is approximately the same as that of plaintiffs who claim they sometimes started work before the regular starting time.

14. There are and were approximately 12 departments in the plant of The Mt. Clemens Pottery Company. The testimony taken at the trial on behalf of the plaintiffs related solely to 4 departments, viz: Clay Shop, Brushing and Dipping Department, Glost Belt, Decorating Department. There is no testimony by any of plaintiffs' witnesses referable to any possible claims of any employees other than the eight former employees who testified.

15. In the Clay Shop, some of the employees worked on the so-called automatic jiggering machines, and these employees could not start work until the machine was started at the regular starting time. Other Clay Shop employees worked in groups of three, and their work could not begin until the entire group of three was present. It was usually after the regular starting time before the majority of the Clay Shop employees were at work. If some employees started work a minute or so before the starting time on certain mornings, they started after the regular time or quit work early on at least as many other days. None of the employees in the Clay Shop worked longer hours than are shown on the records of the company as hours worked.

16. In the Brushing and Dipping Department, as in the Clay Shop, some of the employees worked in groups

of three, and no individual in such a group could begin work until the entire group was present; and there is no showing that any group was fully assembled prior to the regular starting time on any day. Other employees worked on machines which were not turned on until the regular starting time. The clear preponderance of the credible evidence is that work did not begin until the regular starting time or shortly thereafter. None of the employees in this department worked longer hours than are shown on the records of the company as hours worked.

17. As to the Decorating Department, no employees testified that they began work before the regular starting time, and the testimony is uncontradicted that employees in this department worked somewhat lesser hours than are shown on the records of the company as hours worked.

18. In the Glost Belt Department, work could not begin until the belt was turned on; and it could not be operated until practically a full crew was there. The Belt was regularly started for production purposes at 7:00 A. M. None of the employees in this department worked longer hours than are indicated by the records of the company as hours worked.

19. In no department did work start before the regular starting time, even though a few employees had punched in 14 minutes earlier. It was usually after the regular starting time before work actually started.

20. In all departments, employees frequently took rest periods of their own volition and to suit their own convenience during the day. On the average, employees spent twenty to thirty minutes daily in this manner. During these rest periods of "time out" no work was done, but the time so spent was included by the company as hours worked.

21. In all departments, employees frequently quit work from 5 to 10 minutes before the regular quitting time, but they did not punch out until after the regular quitting time.

22. The record is barren of any testimony rising to the dignity of evidence to the effect that any employee claims any time worked in excess of that shown on the records of the company, at any period of the day except the morning. In fact, the plaintiffs apparently do not claim that they worked after the regular quitting time (either at their lunch period or at the end of the day) or that they started work before the regular starting time following their lunch period.

23. None of the employees worked longer hours in any week than is recorded on the records of the company as hours worked.

24. The testimony of plaintiffs' witnesses (and particularly that of Anderson, Trombley, Socia, Dacko and Pearl) was in many respects vague and contradictory, and shown to be inaccurate and untruthful in many instances.

25. As to the claim of "charity work," so-called, it appears that no employees performed work before ringing in at the clock in the morning or subsequent to ringing out at the clock in the afternoon. It further appears that all employees were fully paid for all work done by them. The piece rates included compensation for incidental work necessary to the production of the units for which the employee was paid.

26. Certain employees, pursuant to a custom of many years standing in the pottery industry, furnished certain tools and supplies. Most of the employees purchased their tools at the Pottery, since they could be obtained cheaper

there than elsewhere. The tools were, in fact, sold by the Pottery at a loss.

27. The Wage and Hour Division inspected The Mt. Clemens Pottery Plant in 1939 and made no complaint as to the correctness of the company's records of hours worked. During the inspection, the company's system of keeping records was fully explained to the inspectors of the Wage and Hour Division, and one of them talked privately to numerous employees for the purpose of ascertaining, among other things, whether the company's records of hours worked were correct.

28. In addition to their agreed wages, employees received extra compensation each year in an amount usually equal to two weeks' pay. There was no obligation to make these payments.

29. Employees were paid a guaranteed regular rate of 30 cents an hour and in addition received such extra compensation at agreed piece rates as might be earned by employees whose production exceeded determined levels.

## CONCLUSIONS OF LAW

1. Except as hereinafter specified, all of the conclusions of law reached by the Master, and the Master's report, are hereby confirmed and adopted as the conclusions of the Court.

2. The Court further concludes that plaintiffs have not shown clear error in any respect in the findings and report of the Master, and the same must therefore be accepted by the Court in accordance with the Court rules in such case made and provided.

3. The Court concludes, however, that plaintiffs' acquiescence for many years in the methods employed by defendant company in computing their hours of work (which method was fair, reasonable, and well understood by the employees, and which method was identical with that followed for many years by substantially all other plants in this section of the country) estops the plaintiffs from asserting that some other method of computing time should have been employed.

4. The Court further concludes that such activities as are described at page 25 of the Master's report as "preliminary work" do not constitute a part of the employees' hours of work within the meaning of the Fair Labor Standards Act.

5. The Fair Labor Standards Act should be construed so as to facilitate the achievement of its fundamental purposes (shortening working hours and spreading employment); it should be construed in such a way as to permit compliance therewith in a practical manner; it should not be construed so as to encourage conspiracy, dishonesty, or entrapment.

6. In construing the meaning of the phrase "hours worked," in an action under the Fair Labor Standards Act, the Court must rely on custom, agreement, and established usage.

7. "Hours worked" include only such time as the employee is actually engaged in the performance of some service in furtherance of the interests of his employer, or is required by the employer to hold himself in readiness for work at an assigned work place, under circumstances in which the employee's time is not his own.

8. To justify any recovery in an action under the Fair Labor Standards Act, plaintiffs must prove with reason-

able certainty the amount of time each of them worked each week. No judgment may be predicated on an estimate as to the average amount of extra time worked; nor may damages be based on conjecture, guess, or speculation.

9. Employees have a right to agree that their hours of work should be computed on a basis which permits them to actually work a full forty hours per week at straight time.

10. The only appropriate methods of computing overtime compensation for plaintiffs in accordance with the statutory formula are (1) payment for overtime at once and one-half their guaranteed regular rate of 30 cents per hour, or (2) payment at once and one-half the regular piece rates for such number of pieces as may be produced during overtime hours.

11. To have recovered, plaintiffs would have had to prove not only that they worked overtime, but that the employer suffered or permitted it, and there is no proof of this.

12. Extra compensation voluntarily paid plaintiffs by their employer in addition to their regular earnings, and without any agreement that such extra compensation would be paid, may be off-set against claims of extra compensation for overtime.

13. The institution and prosecution of this suit was not conducted in good faith and, on the contrary, constituted an abuse of the Court's process.

14. Plaintiff Union was not properly authorized by its members to prosecute this action on behalf of any employees.

15. The claims of plaintiffs for all periods prior to November, 1939, were barred by an accord and satisfaction.

16. The allegations of the complaint do not properly set forth the facts required to establish the jurisdiction of the Court.

Albert E. Meder,
Frank E. Cooper,
11th Floor, Ford Building,
Detroit, Michigan.
Bert V. Nunneley,
Mt. Clemens, Michigan,
Attorneys for Defendant,
Mt. Clemens Pottery Company.

Beaumont, Smith & Harris,
Of Counsel.

Dated: Sept. 2, 1943.

## NOTICE OF SETTLEMENT OF FINDINGS OF FACT AND CONCLUSIONS OF LAW AND PRAECIPE

(Filed Sept. 3, 1943)

Now comes The Mt. Clemens Pottery Company, defendant in the above entitled cause, by its attorneys, and notices said cause for hearing on settlement of findings of fact and conclusions of law. Defendant submits herewith proposed findings of fact and conclusions of law, drafted at the Court's suggestion, as being in conformity with the Court's opinion herein; reserving, however, its right to take exception to such findings, or any part thereof.

Albert E. Meder,
Bert V. Nunneley,
Frank E. Cooper,
Attorneys for Defendant,

1100 Ford Building,
Detroit, Michigan.

Beaumont, Smith & Harris,
Of Counsel.

## PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause having been submitted to the Court for its consideration and decision upon the objections of plaintiffs to the report of the Special Master, and upon the motion of the defendant to enter judgment in favor of the defendant on the Master's report, and the Court having duly considered the same and being fully advised in the premises, the Court makes the following findings of fact and conclusions of law.

### FINDINGS OF FACT

1. The report of the Special Master is hereby confirmed and the findings of fact contained in his report are adopted as the findings of Court, except as hereinafter specified.

2. The Court finds that some of the plaintiffs started work before the regular starting time at the beginning of the work day and at the resumption of work after the lunch period. Plaintiffs are not entitled to pay from the minute they punched the time clock; but in computing their hours of work there should be allowed 5 minutes for punching the clock plus an additional 2 minutes to go from the clock to their place of employment, or a total of 7 minutes, before the beginning of work in the morning. There should be allowed a total of 5 minutes at the resumption of work after the lunch period.

3. In computing the hours of work of plaintiffs as employees of defendant Mt. Clemens Pottery Company there

should be included in addition to the hours of work as computed by the Company the following:

(a) In cases where an employee punched his time clock card more than 7 minutes before the regular starting time at the beginning of a shift, there shall be computed as part of his hours of work the number of minutes by which the punch-in time shown on his time card preceded 7 minutes before the regular starting time.

(b) In cases where an employee punched his time clock card more than 5 minutes before his regular starting time after his lunch period, there shall be computed as part of his hours of work the number of minutes by which the punch-in-time shown on his time card preceded 5 minutes before the regular starting time.

## CONCLUSION OF LAW

1. The conclusions of the Special Master, as contained in his report, are hereby confirmed and adopted as the conclusions of the Court, except as hereinafter specified.

2. Plaintiffs have established that work was done by some of them which the Company did not give them credit for, and the computation thereof, on the basis above stated, forms a basis for recovery of overtime pay.

.....

District Judge.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

(Filed Sept. 13, 1943)

This cause having been submitted to the Court for its consideration and decision upon the objections of plaintiffs to the report of the Special Master, and upon the motion of the defendant to enter judgment in favor of the defendant on the Master's report, and the Court having duly considered the same and being fully advised in the premises, the Court makes the following findings of fact and conclusions of law.

### FINDINGS OF FACT

1. The report of the Special Master is hereby confirmed and the findings of fact contained in his report are adopted as the findings of Court, except as hereinafter specified.

2. The Court finds that some of the plaintiffs started work before the regular starting time at the beginning of the work day and at the resumption of work after the lunch period. Plaintiffs are not entitled to pay from the minute they punched the time clock; but in computing their hours of work there should be allowed 5 minutes for punching the clock plus an additional 2 minutes to go from the clock to their place of employment, or a total of 7 minutes, before the beginning of work in the morning. There should be allowed a total of 5 minutes at the resumption of work after the lunch period.

3. In computing the hours of work of plaintiffs as employees of defendant Mt. Clemens Pottery Company there

should be included in addition to the hours of work as computed by the company the following:

(a) In cases where an employee punched his time clock card more than 7 minutes before his regular starting time at the beginning of a shift, there shall be computed as part of his hours of work the number of minutes by which the punch-in time shown on his time card preceded 7 minutes before the regular starting time.

(b) In cases where an employee punched his time clock card more than 5 minutes before his regular starting time after his lunch period, there shall be computed as part of his hours of work the number of minutes by which the punch-in time shown on his time card preceded 5 minutes before the regular starting time.

## CONCLUSIONS OF LAW

1. The conclusions of the Special Master, as contained in his report, are hereby confirmed and adopted as the conclusions of the Court, except as hereinafter specified.

2. Plaintiffs have established that work was done by some of them which the Company did not give them credit for, and the computation thereof, on the basis above stated, forms a basis for recovery of overtime pay.

3. Defendants shall prepare an account of the amounts, if any, due to each of the plaintiffs and persons who have heretofore filed designations in accordance with the foregoing findings of fact and conclusions of law, and submit the same to this Court within thirty days from date hereof.

4. The Court having reserved for future argument and ruling the question of whether extra compensation, if any,

paid claimants should be offset against amounts, if any, which might be found due them under the foregoing findings of fact and conclusions of law, said account shall also show the amount of extra compensation, if any, paid each of the claimants during the period covered thereby.

Frank A. Picard,
District Judge.

## PRELIMINARY STATEMENT OF EXCEPTIONS BY DEFENDANT TO FINDINGS OF FACT AND CONCLUSIONS OF LAW

(Filed Sept. 22, 1943)

Now comes the defendant in the above entitled cause, by its attorneys, and files the following preliminary statement of exceptions to the findings of fact and conclusions of law adopted by the Court herein on September 13, 1943. Because of the pendency of this defendant's prior motion requesting the Court to make various findings of fact and conclusions of law, in part supplemental to and in part inconsistent with those adopted by the Court, and because the Court has not yet passed on certain questions pending before it in said cause, it is impossible at this time to make a complete or final statement of exceptions. At this time, therefore, defendant excepts to said findings and conclusions, to the extent that the same are inconsistent with the report of the Special Master, on the following grounds:

Findings numbered "2" and "3" are not supported by any substantial evidence; and said findings are contrary to the clear and overwhelming weight and preponderance of the evidence; and are inconsistent with undisputed evi-

dence. Under the Court rules in such case made and provided, it was error for the Court to reverse the findings of the Master, no clear error having been shown in the Master's findings and conclusions, and his findings of fact not having been shown to be clearly erroneous. Conclusions numbered "2" and "3" adopted by the Court are contrary to law and to the evidence. The said above mentioned findings and conclusions rest on mere surmise, speculation, and conjecture; there has been no proof of any violation of the Fair Labor Standards Act, and no proof of any damages suffered by the plaintiffs, or any of them, and no proof of the amount of overtime, if any, worked by any of the plaintiffs. The conclusion that defendant shall prepare an account of the amounts, if any, due to each of the plaintiffs, is contrary to law and the just rights of the defendant, said cause not being an action for an accounting but a suit for damages wherein it is incumbent on plaintiffs to prove what damages, if any, they have sustained; and, in any event, such computation should not be required until the Court has passed on other pending issues, decision of which may eliminate the need for preparing any such account. Defendant hereby serves notice that a further and more definite and complete statement of exceptions will be filed in due course, after the decision by the Court on various issues, and questions which remain open and undecided at this time.

Albert E. Meder,
Frank E. Cooper,
11th Floor, Ford Building,
Detroit, Michigan;
Bert V. Nunneley,
Mt. Clemens Savings Bank Bldg.,
Mt. Clemens, Michigan,
Attorneys for Defendant.

Beaumont, Smith & Harris,
Of Counsel.
September 22, 1943.

## COMPUTATIONS MADE IN ACCORDANCE WITH COURT'S FINDINGS OF SEPTEMBER 13

(Filed Dec. 11, 1943)

In compliance with the findings of the Court filed in this cause on September 13, 1943, the defendant, at all times denying that there is any amount whatsoever due to any of the plaintiffs or designated parties, submits herewith a computation made in accordance with the Court's formula, which said formula the defendant at all times claims is not in accordance with the facts and law.

Albert E. Meder,
Frank E. Cooper,
11th Floor, Ford Bldg.,
Detroit, Michigan;
Bert V. Nunneley,
Mt. Clemens Savings Bank Bldg.,
Mt. Clemens, Michigan,
Attorneys for Defendant.
Beaumont, Smith & Harris,
Of Counsel.

Dated at
Detroit, Michigan,
December 11, 1943.

| Name of Employee | Extra Compensation figured as required by Court's opinion | Extra Compensation voluntarily paid during same period in excess of agreed wages and overtime |
|---|---|---|
| Ahlers, Dorothy | $ .60 | $ 15.02 |
| Alband, William | None | 99.02 |
| Albert, Elsie—No Record of Employment | | |
| Almstadt, Norman | 4.94 | 138.92 |
| Anderson, Steve | 8.39 | 141.26 |
| Apfel, Helen | 2.63 | 25.64 |
| Baade, Stella | 7.11 | 55.38 |
| Barg, Raymond | 12.61 | 128.37 |
| Batkins, Merle | .07 | 121.47 |
| Baxter, Arthur | 8.73 | 140.14 |
| Beach, Beatrice | 2.21 | 1.38 |
| Behnke, Bill—Employed after April, 1941 | | |
| Bell, Violet | 4.94 | 22.05 |
| Bingle, Sherman | .09 | 119.01 |
| Blumeister, Howard | 10.29 | 140.61 |
| Bobcean, Melvin | .35 | — |
| Boeling, Barbara | 2.67 | 7.15 |
| Bohorski, Elinor | None | 67.81 |
| Boseak, Helen | .20 | 10.09 |
| Bousson, Julia | .23 | 45.03 |
| Boyer, Gertrude | .47 | — |
| Brandt, Walter | 3.91 | 115.28 |
| Brede, Bernice | None | — |
| Brede, Evelyn | None | — |
| Browne, James | .60 | — |
| Bruder, Molly | 2.46 | 25.35 |
| Bruder, Ruth | 3.67 | 9.83 |
| Brusseau, Joyce | .04 | 46.84 |
| Burgess, Clarence | 8.67 | 128.65 |
| Burtle, Eileen | 5.44 | 51.00 |
| Campau, Alfred | None | 98.98 |
| Campau, Elizabeth | 5.16 | 3.51 |

| Name of Employee | Extra Compensation figured as required by Court's opinion | Extra Compensation voluntarily paid during same period in excess of agreed wages and overtime |
|---|---|---|
| Campau, Frank | 9.44 | 118.55 |
| Campbell, Margaret | 7.99 | 58.57 |
| Chaltron, Harold | 5.74 | 116.79 |
| Ciscke, Walter | 10.16 | 136.10 |
| Collin, Louis | 7.22 | 27.67 |
| Clay, Wells | .01 | 106.56 |
| Collins, Shirley | None | 1.22 |
| Conners, Emerson | 8.57 | 72.22 |
| Contri, Ella | None | 10.15 |
| Copeland, Curtis | 12.83 | 135.75 |
| Copeland, Ethel | .92 | 71.26 |
| Cottrell, Claude | None | 127.74 |
| Cowhy, Mary | .48 | — |
| Crewe, Susie | 8.05 | 56.35 |
| Crombez, Evelyn | 5.88 | 20.88 |
| Cronk, Louise | 2.34 | 7.20 |
| Cross, Gertrude | 2.13 | 60.22 |
| Cumeralto, Martha | 7.60 | 56.92 |
| Dacko, Nick | 4.18 | 15.80 |
| Daigneult, Arthur | .39 | 104.70 |
| Daniels, Helen | .17 | 72.79 |
| Daniels, Robert | None | 105.43 |
| DeBusschere, Leona | 3.90 | 9.91 |
| DeKiere, Lia | 3.78 | 8.29 |
| DeKiere, Margaret | 3.06 | 5.08 |
| DeScheppers, Leo | 6.15 | 114.94 |
| Denisnik, Olga | 4.23 | 14.04 |
| Dill, Glenn | 8.16 | 83.22 |
| Dubay, Clair | 4.24 | 73.99 |
| Dupont, Marcel | 14.62 | 138.97 |
| Eckert, Arthur | .58 | 88.78 |
| Ehrke, George | 16.29 | 100.37 |
| Elgert, Elsie | 10.17 | 21.70 |
| Engelbrecht, Marjory | 6.26 | 53.71 |

| Name of Employee | Extra Compensation figured as required by Court's opinion | Extra Compensation voluntarily paid during same period in excess of agreed wages and overtime |
|---|---|---|
| Erz, Mary—Employed after April, 1941 | | |
| Eschenburg, Edna | — | — |
| Felong, John | 13.15 | 142.54 |
| Fetty, Marion | 10.28 | 27.62 |
| Fobbe, Pauline | 3.57 | 30.77 |
| Fox, Shirley | 2.63 | 1.32 |
| Frazho, Paul | None | 118.93 |
| Freddle, Eva | 7.09 | 51.37 |
| Gaffke, Dorothy | 1.18 | 51.10 |
| Garcia, Pat | .34 | 5.61 |
| Glefke, Elmer | 6.42 | 141.28 |
| Glawe, Ernest | 9.39 | 140.33 |
| Godin, Francis | .40 | 78.83 |
| Gohl, Hilda | 2.89 | 31.22 |
| Goldenbogen, Agnes | 8.37 | 69.06 |
| Goldenbogen, Lavina | .66 | 72.81 |
| Goldenbogen, Marvin | None | 92.54 |
| Gombert, Robert | .83 | 98.57 |
| Gooley, Ruth | None | 8.05 |
| Gottschalk, Ruth | 8.33 | 20.38 |
| Graham, Elsie | 6.75 | 54.88 |
| Green, Robert | .32 | — |
| Gunn, Norman—Employed after April, 1941 | | |
| Gutt, Helen | 2.94 | 27.54 |
| Hampton, Thelma | None | 41.65 |
| Harms, Emma | 15.45 | 57.12 |
| Harms, Gladys | 1.16 | — |
| Harms, Viola | 1.59 | 3.05 |
| Hasse, Floyd | 35.93 | 114.82 |
| Haus, Helen | 1.72 | — |
| Hay, Olive | 2.59 | 55.33 |
| Heisner, Andrew | 13.21 | 127.87 |
| Herpel, Dorothy | None | 10.26 |
| Hicks, Elvira | 1.81 | 53.05 |

| Name of Employee | Extra Compensation figured as required by Court's opinion | Extra Compensation voluntarily paid during same period in excess of agreed wages and overtime |
|---|---|---|
| Hicks, Robert | 2.82 | 3.06 |
| Hildinger, Bertha | 3.69 | 41.03 |
| Hildinger, Evelyn | 7.49 | 66.57 |
| Holmes, Stanley—Employed after April, 1941 | | |
| Hotchkiss, Gerald | 5.80 | 112.53 |
| Houthoofd, George | 4.70 | 70.92 |
| Houthoofd, Jerome | 4.40 | 29.63 |
| Howcroft, Samuel | .86 | 23.55 |
| Hurtienna, Esther | 12.42 | 56.86 |
| Jackman, Louise | 1.90 | 62.39 |
| Jackson, Loraine | 9.28 | 23.52 |
| Jackson, Robert | 1.65 | 24.81 |
| Jackson, Ruth | 4.61 | 43.55 |
| Jakubiak, Wanda | 2.28 | 10.71 |
| Jankowski, Kurt | 7.32 | 72.69 |
| Jorgenson, Kenneth | None | — |
| Jurek, Stella | 3.35 | 10.79 |
| Kaiser, Paul | 11.35 | 85.40 |
| Kandt, David | 1.51 | 8.05 |
| Kandt, Marion | None | 9.50 |
| Kanekowski, Marie | 9.65 | 68.03 |
| Kauten, Henry | None | 111.13 |
| Kempff, Dorothy | 1.57 | 2.84 |
| Kendall, Dorothy | .45 | 71.45 |
| Kenney, Edith | 9.24 | 68.47 |
| Kethe, Norma | 3.96 | 20.43 |
| Kleinhans, Florence | 3.73 | 19.70 |
| Kotzke, LaVerne | 1.94 | 4.60 |
| Kogleman, Sam | .15 | 59.26 |
| Krause, Ruth | .34 | 59.18 |
| Krohn, Virginia | 2.57 | 9.10 |
| Kudla, Antoinette | 8.60 | 60.58 |
| Kudla, Julia | 6.64 | 55.29 |
| Kukuk, Martin | 13.44 | 144.27 |

| Name of Employee | Extra Compensation figured as required by Court's opinion | Extra Compensation voluntarily paid during same period in excess of agreed wages and overtime |
|---|---|---|
| Kukuk, Otto | 7.15 | 138.06 |
| Kulman, Kathrine | 1.34 | — |
| Kuzdzal, Helen | 2.17 | 4.12 |
| LaForest, Ethel | 4.23 | 8.09 |
| Larimer, Earl | .13 | 119.78 |
| Leenkneght, Marie | 3.60 | 61.12 |
| Lehl, Adam | 6.06 | 118.86 |
| Liebzeit, Clarence | .28 | 118.38 |
| Leibzeit, George | 2.67 | 5.92 |
| Lengyl, Agnes | None | 63.55 |
| Logghe, Margaret | None | 2.93 |
| Lozen, Harry | 8.97 | 96.86 |
| Lozen, Martha | .25 | — |
| Luchtman, Nelson | 10.37 | 146.81 |
| Ludeman, Louis | 32.84 | 124.47 |
| Lulay, Virginia | None | 62.42 |
| MacLeod, Virginia | Employed after April, 1941 | |
| Madus, Florence | None | 5.90 |
| Mallast, Jennie | 8.67 | 66.58 |
| Manchik, Agnes | 2.71 | 5.66 |
| Marleau, Elizabeth | 9.22 | 71.51 |
| Masters, Clayton | .24 | 82.28 |
| Masters, Earl | 1.26 | 98.28 |
| May, Catherine | 10.47 | 56.77 |
| May, Dorothy | 3.33 | 61.97 |
| May, Harry | None | 79.63 |
| Mayabb, Anna | 6.88 | 58.17 |
| Mayabb, Twila | 2.18 | 3.75 |
| McVicar, Donald | 9.57 | 23.13 |
| Meitz, Arthur | 12.37 | 121.94 |
| Metz, John | .24 | 126.60 |
| Meyers, Viola | 9.51 | 68.82 |
| Miller, Esther | 7.27 | 56.87 |
| Miller, Florence | 5.40 | 29.09 |

| Name of Employee | Extra Compensation figured as required by Court's opinion | Extra Compensation voluntarily paid during same period in excess of agreed wages and overtime |
|---|---|---|
| Miller, Irene | 9.62 | 25.81 |
| Miller, Lawrence | .92 | 107.03 |
| Miller, Marie | .34 | 61.50 |
| Miller, Theodore | 1.75 | 122.59 |
| Mohanyk, Aleck—Employed after April, 1941 | | |
| Neal, Olga | 4.69 | 58.09 |
| Neoker, Irene | 7.73 | 55.69 |
| Nicka, Carl | 3.25 | 81.79 |
| Nicks, Edna | 3.38 | 25.79 |
| Noe, Esther | .13 | 43.44 |
| Nofzinger, Walter | 9.13 | 121.17 |
| Olewnicki, Genevieve | 3.20 | 2.71 |
| Olewnicki, Janet | 3.80 | 3.72 |
| Osborne, James | None | 113.90 |
| Osterman, Katherine | 1.96 | 22.09 |
| Paliniewicz, Alfred | 1.43 | 1.53 |
| Parrott, Ruth | None | 48.09 |
| Pearl, Floyd | 8.93 | 140.38 |
| Pearl, Fred | 11.43 | 115.21 |
| Pearl, Harold | 4.49 | 114.95 |
| Pearl, Marie | 1.72 | 3.70 |
| Persinger, Helen | None | 39.06 |
| Persinger, Thomas | 4.42 | 72.79 |
| Peters, Martha | 2.68 | 1.19 |
| Petrucci, Anthony | 1.51 | 70.87 |
| Phillips, Delbert | None | 112.23 |
| Phillips, Mary | .89 | — |
| Pierzina, Eva | 8.35 | 59.76 |
| Pretzer, Arthur | 5.99 | 117.21 |
| Pretzer, Lucille | 10.97 | 57.77 |
| Rachow, John | 12.75 | 97.97 |
| Rauschelbach, Adelia | 7.96 | 56.56 |
| Redlawski, Helen | 5.41 | 59.19 |
| Redlawski, Wilma | 7.32 | 34.41 |

| Name of Employee | Extra Compensation figured as required by Court's opinion | Extra Compensation voluntarily paid during same period in excess of agreed wages and overtime |
|---|---|---|
| Reeder, Stanley | None | 67.54 |
| Reeder, Wesley | 8.02 | 101.14 |
| Rettig, Ann | 5.23 | 10.13 |
| Richards, Elaine | .21 | — |
| Ritter, John | .98 | 8.71 |
| Rohrbeck, Luella | 5.62 | 56.82 |
| Rondo, Ruth | .03 | 8.05 |
| Rozanski, Mary | .06 | — |
| Sabatini, Rita | .06 | 57.29 |
| Sahr, Emma | .60 | 59.08 |
| Sahrow, Elmer | 13.76 | 119.03 |
| Sawicki, Mary | 9.64 | 35.58 |
| Schalm, John | 3.27 | 2.63 |
| Schalm, Mikel | 2.32 | 127.31 |
| Scheible, Edna | 1.66 | 2.14 |
| Scheible, Mary | 6.46 | 27.09 |
| Schippocasse, Albert | .26 | 131.87 |
| Schleussler, Marion | 2.04 | 54.73 |
| Schoof, Carl | .02 | 117.45 |
| Schramm, Beatrice | .03 | 18.59 |
| Schroeder, George | 18.76 | 144.78 |
| Schroeder, Leona | 6.50 | 57.33 |
| Schroeder, Shirley | 6.20 | 16.26 |
| Schuetzler, Florence | .86 | 49.39 |
| Schulte, Rita | 7.41 | 55.84 |
| Schuster, Josephine | 8.80 | 23.14 |
| Schwartz, Clarence | 10.32 | 145.66 |
| Selk, Walter | None | 129.98 |
| Shattuck, Russell | 1.12 | 96.76 |
| Sibbe, Arthur | 15.33 | 142.04 |
| Sievart, Carl | 6.38 | 84.62 |
| Siewart, Paul | 13.70 | 130.89 |
| Smith, Preston | 6.45 | 116.01 |
| Snyder, Eileen | 4.63 | 4.83 |

| Name of Employee | Extra Compensation figured as required by Court's opinion | Extra Compensation voluntarily paid during same period in excess of agreed wages and overtime |
|---|---|---|
| Socia, Lillian | 6.81 | 56.02 |
| Sonntag, Esther | .92 | |
| Sopha, Bernhardt | None | 73.82 |
| Sopha, Eric | None | 130.20 |
| Sopha, Esther | .60 | 23.49 |
| Spicer, Verlon | None | 31.59 |
| Stafford, Glen | 7.04 | 121.69 |
| Stafford, Leo | 8.72 | 89.55 |
| Stanke, Alma | None | 48.71 |
| Stark, B. | .11 | 95.66 |
| Starkey, Ilene | .15 | 50.53 |
| Starkey, Paul | 3.75 | 92.05 |
| Stoll, Alice | .89 | 4.68 |
| Strong, Dorothy | 3.86 | 4.94 |
| Suer, Edwin | 4.65 | 65.38 |
| Sutton, Frank | .54 | 75.15 |
| Tebo, Chesley | 10.98 | 104.80 |
| Teise, Elsie | .01 | 15.71 |
| Tesner, Tom | 1.68 | 123.77 |
| Tewksbury, Jean | None | 18.19 |
| Thoel, Louis | 6.74 | 138.83 |
| Thoel, Walter | .98 | 106.29 |
| Thomas, Albert | 1.40 | 9.47 |
| Thomas, Aletha | .26 | 48.38 |
| Thurman, Louis | 8.45 | 139.83 |
| Thurman, Viola | 3.59 | 67.02 |
| Tupschov, Elizabeth | 9.86 | 33.66 |
| Trombley, Earl | 3.27 | 79.47 |
| Trombley, Ray | 12.54 | 73.34 |
| Ulhrich, Eleanora | 7.00 | 19.65 |
| Ulman, Emerson | None | 85.03 |
| Van Rosenberg, Mable | None | 24.43 |
| Vertin, Kathryn | .26 | 27.22 |
| Watkins, Albert | .87 | 121.90 |

| Name of Employee | Extra Compensation figured as required by Court's opinion | Extra Compensation voluntarily paid during same period in excess of agreed wages and overtime |
|---|---|---|
| Watkins, Frances | 1.66 | 1.56 |
| Weier, Artilla | 4.04 | 61.48 |
| Weier, Delia | .05 | 23.58 |
| Weier, Edwin | .33 | 118.49 |
| Weier, Wilbert | 1.51 | 109.54 |
| Weiner, Dorothy | 3.75 | 58.52 |
| Weiner, John | 4.61 | 99.98 |
| Wendt, William | 5.50 | 124.97 |
| Wilder, Robert | .76 | 11.33 |
| Willey, Ray | .18 | 112.35 |
| Williams, Margaret | .20 | 70.09 |
| Wilson, Huela—No Record of Employment | | |
| Yochum, Margaret | 5.12 | 56.87 |
| Young, Burnetta—No Record of Employment | | |
| Zavaruka, Tinnie | 2.31 | 50.81 |
| Zieman, Lorraine | 1.14 | — |
| Zieman, Margaret | 1.28 | — |
| Zienert, Mildred | 6.60 | 18.53 |
| Zychski, Leona | 1.91 | 7.97 |
| Total | $1,207.87 | $16,640.19 |

## PRAECIPE

(Filed Dec. 11, 1943)

To the Clerk of said Court:

You will please notice for hearing at 2:00 P. M., Monday, December 20, 1943, or as soon thereafter as counsel may be heard, before the Honorable Frank A. Picard, District Judge, defendant's motion of September 2 requesting the adoption of findings of fact and conclusions of law. The said motion was hitherto noticed for hearing on September 13, and on that day the Court adjourned the hearing sine die pending the completion of certain computations which the Court directed the defendant to make. The defendant having completed and filed with the Court such computations (but always preserving its objection to the formula therein embodied and to the requirement that such computations be made by it) said motion should now be heard. The day and hour above-mentioned were set by Honorable Frank A. Picard, District Judge, and this notice is being filed pursuant to his suggestion and instructions.

Albert E. Meder,
Frank E. Cooper,
11th Floor, Ford Building,
Detroit, Michigan.
Bert V. Nunneley,
Mt. Clemens Savings Bank Bldg.
Mt. Clemens, Michigan,
Attorneys for Defendant.
Beaumont, Smith & Harris,
Of Counsel.

Dated at Detroit, Michigan,
December 11, 1943.

## OPINION OF THE COURT

(Filed Mar. 3, 1944)

The Special Master appointed by the Court herein filed his report on June 5, 1943. On June 30, 1943 this Court filed an opinion covering certain aspects raised in the issues. Certain findings of fact and conclusions of law were submitted. The Court ordered an accounting to be filed upon the basis of a formula determined upon as a result of the evidence adduced at the trial indicating the extent of the working time of the plaintiff employees. This accounting was submitted by defendant company on January 4, 1944, and plaintiff employees immediately objected to the method of computation utilized by the company. Extensive briefs have been filed, and counsel have orally argued the questions raised.

### FINDINGS OF FACT

Counsel for both plaintiffs and defendant have asked for supplemental or additional findings of fact and conclusions of law, and the Court will, in the interest of clarifying the record and determining the issues, attempt to outline its position on the matters discussed.

Because of the extensive requests for additional findings of fact and conclusions of law, the Court has deemed it desirable to re-examine the lengthy testimony. The respective motions of plaintiffs and defendant for additional findings of fact and conclusions of law are hereby

overruled, with exceptions saved, and the Court adopts the following additional and supplemental findings of facts and conclusions of law.

1. Plaintiff employees contended in effect that they were required to report for work approximately fourteen minutes before the hour in the morning and that they immediately started productive work and were paid only from the subsequent quarter hour. The employees further contended that this process of requiring them to work for fourteen minutes after the hour was repeated at lunch recess, without payment except from the hour. After reviewing the record of the evidence adduced, the Court is convinced that plaintiff employees were in fact required by the foremen of the defendant as we stated in our earlier opinion that

> "when they (foremen) told them (employees) that work would start at 6:45 o'clock, they likewise mentioned the hour of 6:31; or if 7:00 A. M. was the starting time, then 6:46 was also designated in some manner. With this picture before us we cannot help but believe that there was a method in this formula beyond that expressed by defendant's witnesses."

2. This Court found specifically that defendant company through its foremen had sought to circumvent the Fair Labor Standards Act, but we also held that from the evidence, the company should be allowed seven minutes before the starting hour as time spent by employees in checking through time clocks and in going to their places of employment during the day. This Court thus attempted to visualize the realities of the situation and required defendant to compensate employees for all minutes shown on the time cards over seven before the starting hour in the morning and over five minutes before the hour set for beginning of the afternoon work.

3. Defendant company made computations of time worked by plaintiffs in a manner which they represent to be in accordance with directions of this Court. The breakdown of these computations has not been filed, and the Court is unable, from the conclusions set forth, to determine that each employee has been offered complete restitution. The defendant will be required to file with the Clerk of this Court, within thirty days hereafter, such supporting data as to enable the Court to determine the accuracy of said accounting.

The computation submitted does show two items, however. In one column there is an amount of extra compensation for overtime claimed by each employee, and in the next column there is set forth what purports to be extra compensation voluntarily paid such person during the same period, in excess of the agreed wages and overtime. The defendant claims that the amounts set forth in the second column, whether they be called bonuses, gifts, gratuities or extra compensation, can now be deducted by it from the amounts set forth in the first column, in determining the amount of the judgment to be entered in favor of each individual.

According to defendant's account, a computation has been made for approximately 289 persons who are named plaintiffs or who have duly intervened herein. Under this computation, 45 employees have no claim for overtime; 59 have claims for less than $1.00; 85 have claims between $1.00 and $5.00; 71 have claims between $5.00 and $10.00; 23 have claims between $10.00 and $15.00; 4 have claims between $15.00 and $20.00 and 2 have claims between $30.00 and $35.00. The company states in such accounting that

> "extra compensation voluntarily paid these 289 individuals during the same period as covered by the computation, and in excess of their agreed wages and overtime was $16,640.19."

The question presented to us is "should this bonus or extra compensation be deducted from the wages admittedly owing for overtime be deducted from the amount of the judgment rendered plaintiff employees herein?" This Court thinks not, and from the evidence, finds that such deductions are not permissible under the circumstances of this case.

## CONCLUSIONS OF LAW

4. Defendant company places much emphasis upon the decision of my colleague, Hon. Arthur F. Lederle, in the case of Corey v. Detroit Steel Corporation, number 3704 on the docket of this court, decided July 31, 1943. In that case the Court stated that

> "A payment made to an employee by an employer may be compensation for services, even though made voluntarily and without legal obligation, and where it appears from consideration of all the surrounding facts and circumstances that a bonus was not a gift of the employer to the employee, the same should be considered as compensation for services" citing Bass v. Hawley, 62 Fed. (2nd) 721, Willkie v. Commissioner, 127 Fed. (2nd) 953, Thomas v. Commissioner, 135 Fed. (2nd) 378.

The instant case appears easily distinguishable from Corey v. Detroit Steel Corporation, supra. The evidence clearly indicates that defendant at bar gave this bonus or gratuity voluntarily, without compulsion, and certainly under no duress or mistake. In every sense the company intended that its plan, which is called upon occasion the "51-52-53 plan," should furnish employees a gift equal to or in lieu of a vacation. The president of defendant

company stated that no agreement existed between the company and the employees relative to the granting of the bonus, and it is obvious that it was merely a unilateral arrangement worked out by the company to furnish a gratuity to the employees. It must be conceded that the employees could not enforce such a claim in the courts.

5. Under all the facts and circumstances herein it appears clear that this is a gratuity, and it seems that since it was intended as a gift that it would ill become this Court to permit the employer, years later, to treat the same as a part of weekly or annual compensation when faced with the claim of employees for lawful wages accruing under an Act of Congress. To treat it otherwise in this case would savor too largely of Indian giving, and this Court would not be a party to such a strained interpretation. Judgment must be afforded to plaintiffs and each of them for the amount of overtime worked each week under the formula heretofore drafted by this Court. As already indicated, liquidated damages will be allowed plaintiffs in an amount equal to such sum.

6. The Court may, under the Fair Labor Standards Act, require defendant to pay reasonable attorney fees to plaintiffs' counsel.

This litigation has intermittently covered almost three years. Pleadings have been examined and argued, and all counsel have attempted to adequately assist the Court in arriving at fair and accurate conclusions. Many actual days of trial work have been involved, and undoubtedly an unusual amount of time has been expended by all counsel in this exhaustive litigation. A petition for allowance has been filed herein, and the Court appreciates that a reasonable attorney fee for the work performed by plaintiffs' counsel might well, upon a basis usually applied by competent counsel, amount to a sizable amount. This Court

is conscious of the fact, however, that plaintiffs have fallen down completely on at least 75 percent of the claims made in their bill of complaint and statements in court. Before the Master plaintiff failed 100 percent. It is conceivable that had plaintiffs made reasonable claims at the start defendant might have made some offer of compromise although defendant's attitude has not encouraged such a conclusion by this Court. But reasonable claims would have simplified the issue and cut the time consumed to a minimum. If this case has taken as long as it has it is in great part due to plaintiffs, though not entirely. On the other hand it is—in this Court's opinion—chiefly defendant's errors that forced plaintiffs to court in the first place. These facts the Court must consider in setting fees.

It cannot now be said whether an appeal will be filed in this action by either party, although this Court would welcome clarification of issues determined herein by the Circuit Court of Appeals for the Sixth Circuit. Yet, if additional work is required, then the matter of additional fees can be fixed by the Circuit Court of Appeals, at the time of appeal, or the case can be sent back to this Court for further determination. Under all the circumstances, it seems to this Court that counsel for plaintiffs are entitled to an award of attorney fees for work up to the date of the filing of this opinion in an amount of $2,000.00.

7. The Special Master has already been awarded the sum of $2,000.00 as compensation for hearing the issues herein, and this Court orders judgment for said amount to be rendered against the defendant for said sum. Costs are taxed in plaintiffs' favor.

(sgd.) Frank A. Picard,
United States District Judge.

Dated: March 3rd, 1944.

## MOTION TO AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW AS DETERMINED BY THE COURT IN ITS OPINION OF MARCH 3, 1944

(Filed May 24, 1944)

Now come the plaintiffs, by their counsel, and move the Court to amend its findings of fact and conclusions of law as set forth in its opinion of March 3, 1944, by amending the same in the following respects, to-wit:

(1) In Item 2 of findings of fact, the Court stated as follows:

> "This Court thus attempted to visualize the realities of the situation, and required defendant to compensate employees for all minutes shown on the time cards over seven before the starting hour in the morning and over five minutes before the hour set for beginning of the afternoon work."

Movents ask that said opinion be altered and amended to read as follows:

> "This Court finds from the evidence that all of said plaintiff employees were upon the premises of the defendant at defendant's request and under defendant's control and direction during the times set forth upon the time card records kept by the company, and that during the periods as set forth upon said time card records, said employees were engaged in a process and occupation necessary to production. That the travel time expended by the employees was not primarily undertaken for the convenience of the employees, but said time was spent rather for the benefit of defendant and the defendant's manufacturing operations; that the

time spent by plaintiff employees upon defendant's premise and under defendant's direction and control, as shown by defendant's time card records, is determined by this Court to be productive employment within the meaning of the Fair Labor Standards Act, for which defendant must compensate plaintiff employees."

(2) By adding to the conclusions of law the following statement:

"The work week or time worked by plaintiff employees is therefore determined to be the time spent by said employees in productive activities upon defendant's premises, at defendant's request and under defendant's direction and control. For such purposes the time spent by said employees in traveling directly from the time clocks to their machines or places of direct physical activity is determined to be compensable time, said employees are engaged in a process and occupation necessary to actual production. There is 'a fossorial activity bearing all the indicia of labor, and the determination of the place of employment is definitely a matter of determination by the defendant.'"

Edward Lamb,
Attorney for Plaintiffs.

1014 Edison Building.
Toledo 4, Ohio.

## OBJECTIONS TO ALLOWANCE OF ATTORNEY FEES

(Filed June 12, 1944)

Now comes the Mt. Clemens Pottery Company, one of the defendants in the above entitled cause, by Beaumont, Smith & Harris and Bert V. Nunneley, its attorneys and objects to the allowance of $2,000 as attorney fees heretofore made in favor of Edward Lamb, attorney for the plaintiffs.

For the following reasons:

1. Such allowance is excessive in view of the amount of recovery made by the plaintiffs.

2. That while considerable time was spent on the trial of said cause, most of such time concerned claims on the part of the plaintiffs which were disallowed.

3. That a great deal of time in connection with the trial of said cause was expended in the contest of claims made by the plaintiffs which were excessive in amount.

4. That a great deal of time spent in the trial of said cause was on the hearing of claims which were utterly without foundation in fact and were in truth abandoned by the plaintiffs in the course of the trial.

5. That said allowance was made without any testimony to support it and without a hearing on the petition for same.

6. That said allowance was made to Edward Lamb whereas in fact no judgment can be rendered in this case in favor of said Lamb for the reason that he is not a party to the cause.

Beaumont, Smith & Harris
F. E. Cooper,
11th Floor, Ford Building,
Detroit 26, Michigan.
Bert V. Nunneley,
Mt. Clemens Savings Bank Bldg.
Mt. Clemens, Michigan.
Attorneys for the Defendant,
Mt. Clemens Pottery Company.

June 10, 1944.

## JUDGMENT

(Filed June 13, 1944)

At a session of said Court held in the Federal Building in the City of Detroit, Eastern District of Michigan, this 13th day of June, 1944.

Present: Hon. Frank A. Picard, District Judge.

The above entitled cause having come on to be heard and the same having been referred to Donald L. Quaife, Esq., as Special Master, to hear proofs and render a report to the Court, and exceptions to the report of the Master having been filed by plaintiffs, and the same having been considered by the Court, and the Court being fully advised in the premises, It Is Hereby Ordered, Adjudged And Decreed As Follows:

1. The plaintiffs and parties filing designations as listed in the attached schedule which is hereby incorporated herein and made a part hereof, shall each recover of said defendant Mt. Clemens Pottery Company the sum set opposite his or her name as overtime compensation, plus an additional equal amount representing liquidated damages, as provided in Section 16 (b) of the Fair Labor Standards Act, Public Act No. 718, 75th Congress, 3rd Session.

2. Said employees are hereby given judgment for all unpaid time over seven minutes before the starting hour in the morning, and over five minutes before the hour set for beginning of the afternoon work. No deduction therefrom shall be made by the defendant for bonuses or so-called extra compensation which the Court herein discussed in its opinion of March 3, 1944, and found to be gratuities, gifts and extra compensation voluntarily paid by defendant to the plaintiff employees. Upon such determination of the time worked by said employees, the de-

fendant shall pay said employees for all hours in which they were so employed at the rate of time and one-half times their regular rate for the time spent in excess of the prescribed hours established by the Fair Labor Standards Act of 1938, and the defendant shall pay to said plaintiffs and other employees having duly filed their authorizations herein, an amount equal thereto as liquidated damages, as provided for in said Act.

3. It Is Further Ordered, Adjudged And Decreed that plaintiffs be and they hereby are allowed the sum of $2,000 as attorney fees as compensation for their attorneys up to and including the date hereof, said sum to be included in the costs which the plaintiffs are hereinafter authorized to tax.

4. It Is Further Ordered, Adjudged And Decreed that the Court having heretofore allowed Donald L. Quaife, Esq., the sum of $2,600 as compensation in full for his services as Special Master herein and the plaintiffs having paid $300 thereof and the defendant having paid $2,300 thereof, plaintiffs may tax the defendant as part of their costs in this cause the said sum of $300 so paid on the amount of the said Donald L. Quaife, Esq.

5. It Is Further Ordered, Adjudged And Decreed that plaintiffs be and they are hereby awarded costs including the attorney fees and Master's fee hereinbefore referred to, to be duly taxed.

To all of such findings, orders and judgments defendant excepts. To that part of the rulings, findings, orders and judgments denying the claim of plaintiffs that there should be counted as a part of the hours of work all the time spent on the defendant's premises as indicated by the time clock cards, plaintiffs all duly except.

A stay of forty days is hereby granted.

Frank A. Picard,
United States District Judge.

## AMOUNTS OF JUDGMENT IN FAVOR OF INDIVIDUAL PLAINTIFFS AND PARTIES SIGNING DESIGNATIONS

| Name | Amount Due as Overtime Compensation | Liquidated Damages | Total |
|---|---|---|---|
| Ahlers, Dorothy | $ 0.60 | $ 0.60 | $ 1.20 |
| Almstadt, Norman | 4.94 | 4.94 | 9.88 |
| Anderson, Steve | 8.39 | 8.39 | 16.78 |
| Apfel, Helen | 2.63 | 2.63 | 5.26 |
| Baade, Stella | 7.11 | 7.11 | 14.22 |
| Barg, Raymond | 12.61 | 12.61 | 25.22 |
| Batkins, Merle | .07 | .07 | .14 |
| Baxter, Arthur | 8.73 | 8.73 | 17.46 |
| Beach, Beatrice | 2.21 | 2.21 | 4.42 |
| Bell, Violet | 4.94 | 4.94 | 9.88 |
| Bingle, Sherman | .09 | .09 | .18 |
| Blumeister, Howard | 10.29 | 10.29 | 20.58 |
| Bobcean, Melvin | .35 | .35 | .70 |
| Boeling, Barbara | 2.67 | 2.67 | 5.34 |
| Boseak, Helen | .20 | .20 | .40 |
| Bousson, Julia | .23 | .23 | .46 |
| Boyer, Gertrude | .47 | .47 | .94 |
| Brandt, Walter | 3.91 | 3.91 | 7.82 |
| Browne, James | .60 | .60 | 1.20 |
| Bruder, Molly | 2.46 | 2.46 | 4.92 |
| Bruder, Ruth | 3.67 | 3.67 | 7.34 |
| Brusseau, Joyce | .04 | .04 | .08 |
| Burgess, Clarence | 8.67 | 8.67 | 17.34 |
| Burtle, Eileen | 5.44 | 5.44 | 10.88 |
| Campau, Elizabeth | 5.16 | 5.16 | 10.32 |
| Campau, Frank | 9.44 | 9.44 | 18.88 |
| Campbell, Margaret | 7.99 | 7.99 | 15.98 |
| Chaltron, Harold | 5.74 | 5.74 | 11.48 |
| Ciscke, Walter | 10.16 | 10.16 | 20.32 |

| Name | Amount Due as Overtime Compensation | Liquidated Damages | Total |
|---|---|---|---|
| Collin, Louis | 7.22 | 7.22 | 14.44 |
| Clay, Wells | .01 | .01 | .02 |
| Conners, Emerson | 8.57 | 8.57 | 17.14 |
| Copeland, Curtis | 12.83 | 12.83 | 25.66 |
| Copeland, Ethel | .92 | .92 | 1.84 |
| Cowhy, Mary | .48 | .48 | .96 |
| Crewe, Susie | 8.05 | 8.05 | 16.10 |
| Crombez, Evelyn | 5.88 | 5.88 | 11.76 |
| Cronk, Louise | 2.34 | 2.34 | 4.68 |
| Cross, Gertrude | 2.13 | 2.13 | 4.26 |
| Cumeralto, Martha | 7.60 | 7.60 | 15.20 |
| Dacko, Nick | 4.18 | 4.18 | 8.36 |
| Daigneult, Arthur | .39 | .39 | .78 |
| Daniels, Helen | .17 | .17 | .34 |
| DeBusschere, Leona | 3.90 | 3.90 | 7.80 |
| DeKiere, Lia | 3.78 | 3.78 | 7.56 |
| DeKiere, Margaret | 3.06 | 3.06 | 6.12 |
| DeScheppers, Leo | 6.15 | 6.15 | 12.30 |
| Denisuik, Olga | 4.23 | 4.23 | 8.46 |
| Dill, Glenn | 8.16 | 8.16 | 16.32 |
| Dubay, Clair | 4.24 | 4.24 | 8.48 |
| Dupont, Marcel | 14.62 | 14.62 | 29.24 |
| Eckert, Arthur | .58 | .58 | 1.16 |
| Ehrke, George | 16.29 | 16.29 | 32.58 |
| Elgert, Elsie | 10.17 | 10.17 | 20.34 |
| Engelbrecht, Marjory | 6.26 | 6.26 | 12.52 |
| Felong, John | 13.15 | 13.15 | 26.30 |
| Fetty, Marion | 10.28 | 10.28 | 20.56 |
| Fobbe, Pauline | 3.57 | 3.57 | 7.14 |
| Fox, Shirley | 2.63 | 2.63 | 5.26 |
| Freddle, Eva | 7.09 | 7.09 | 14.18 |
| Gaffke, Dorothy | 1.18 | 1.18 | 2.36 |
| Garcia, Pat | .34 | .34 | .68 |
| Glefke, Elmer | 6.42 | 6.42 | 12.84 |
| Glawe, Ernest | 9.39 | 9.39 | 18.78 |
| Godin, Francis | .40 | .40 | .80 |

| Name | Amount Due as Overtime Compensation | Liquidated Damages | Total |
|---|---|---|---|
| Gohl, Hilda | 2.89 | 2.89 | 5.78 |
| Goldenbogen, Agnes | 8.37 | 8.37 | 16.74 |
| Goldenbogen, Lavina | .66 | .66 | 1.32 |
| Gombert, Robert | .83 | .83 | 1.66 |
| Gottschalk, Ruth | 8.33 | 8.33 | 16.66 |
| Graham, Elsie | 6.75 | 6.75 | 13.50 |
| Green, Robert | .32 | .32 | .64 |
| Gutt, Helen | 2.94 | 2.94 | 5.88 |
| Harms, Emma | 15.45 | 15.45 | 30.90 |
| Harms, Gladys | 1.16 | 1.16 | 2.32 |
| Harms, Viola | 1.59 | 1.59 | 3.18 |
| Hasse, Floyd | 35.93 | 35.93 | 71.86 |
| Haus, Helen | 1.72 | 1.72 | 3.44 |
| Hay, Olive | 2.59 | 2.59 | 5.18 |
| Heisner, Andrew | 13.21 | 13.21 | 26.42 |
| Hicks, Elvira | 1.81 | 1.81 | 3.62 |
| Hicks, Robert | 2.82 | 2.82 | 5.64 |
| Hildinger, Bertha | 3.69 | 3.69 | 7.38 |
| Hildinger, Evelyn | 7.49 | 7.49 | 14.98 |
| Hotchkiss, Gerald | 5.80 | 5.80 | 11.60 |
| Houthoofd, George | 4.70 | 4.70 | 9.40 |
| Houthoofd, Jerome | 4.40 | 4.40 | 8.80 |
| Howcroft, Samuel | .86 | .86 | 1.72 |
| Hurtienna, Esther | 12.42 | 12.42 | 24.84 |
| Jackman, Louise | 1.90 | 1.90 | 3.80 |
| Jackson, Loraine | 9.28 | 9.28 | 18.56 |
| Jackson, Robert | 1.65 | 1.65 | 3.30 |
| Jackson, Ruth | 4.61 | 4.61 | 9.22 |
| Jakubiak, Wanda | 2.28 | 2.28 | 4.56 |
| Jankowski, Kurt | 7.32 | 7.32 | 14.64 |
| Jurek, Stella | 3.35 | 3.35 | 6.70 |
| Kaiser, Paul | 11.35 | 11.35 | 22.70 |
| Kandt, David | 1.51 | 1.51 | 3.02 |
| Kanekowski, Marie | 9.65 | 9.65 | 19.30 |
| Kempff, Dorothy | 1.57 | 1.57 | 3.14 |
| Kendall, Dorothy | .45 | .45 | .90 |

| Name | Amount Due as Overtime Compensation | Liquidated Damages | Total |
|---|---|---|---|
| Kenney, Edith | 9.24 | 9.24 | 18.48 |
| Kethe, Norma | 3.96 | 3.96 | 7.92 |
| Kleinhans, Florence | 3.73 | 3.73 | 7.46 |
| Kotzke, LaVerne | 1.94 | 1.94 | 3.88 |
| Kogelman, Sam | .15 | .15 | .30 |
| Krause, Ruth | .34 | .34 | .68 |
| Krohn, Virginia | 2.57 | 2.57 | 5.14 |
| Kudla, Antoinette | 8.60 | 8.60 | 17.20 |
| Kudla, Julia | 6.64 | 6.64 | 13.28 |
| Kukuk, Martin | 13.44 | 13.44 | 26.88 |
| Kukuk, Otto | 7.15 | 7.15 | 14.30 |
| Kulman, Kathrine | 1.34 | 1.34 | 2.68 |
| Kuzdzal, Helen | 2.17 | 2.17 | 4.34 |
| LaForest, Ethel | 4.23 | 4.23 | 8.46 |
| Larimer, Earl | .13 | .13 | .26 |
| Leenkneght, Marie | 3.60 | 3.60 | 7.20 |
| Lehl, Adam | 6.06 | 6.06 | 12.12 |
| Leibzeit, Clarence | .28 | .28 | .56 |
| Leibzeit, George | 2.67 | 2.67 | 5.34 |
| Lozen, Harry | 8.97 | 8.97 | 17.94 |
| Lozen, Martha | .25 | .25 | .50 |
| Luchtman, Nelson | 10.37 | 10.37 | 20.74 |
| Ludeman, Louis | 32.84 | 32.84 | 65.68 |
| Mallast, Jennie | 8.67 | 8.67 | 17.34 |
| Manchik, Agnes | 2.71 | 2.71 | 5.42 |
| Marleau, Elizabeth | 9.22 | 9.22 | 18.44 |
| Masters, Clayton | .24 | .24 | .48 |
| Masters, Earl | 1.26 | 1.26 | 2.52 |
| May, Catherine | 10.47 | 10.47 | 20.94 |
| May, Dorothy | 3.33 | 3.33 | 6.66 |
| Mayabb, Anna | 6.88 | 6.88 | 13.76 |
| Mayabb, Twila | 2.18 | 2.18 | 4.36 |
| McVicar, Donald | 9.57 | 9.57 | 19.14 |
| Meitz, Arthur | 12.37 | 12.37 | 24.74 |
| Metz, John | .24 | .24 | .48 |
| Meyers, Viola | 9.51 | 9.51 | 19.02 |

| Name | Amount Due as Overtime Compensation | Liquidated Damages | Total |
|---|---|---|---|
| Miller, Esther | 7.27 | 7.27 | 14.54 |
| Miller, Florence | 5.40 | 5.40 | 10.80 |
| Miller, Irene | 9.62 | 9.62 | 19.24 |
| Miller, Lawrence | .92 | .92 | 1.84 |
| Miller, Marie | .34 | .34 | .68 |
| Miller, Theodore | 1.75 | 1.75 | 3.50 |
| Neal, Olga | 4.69 | 4.69 | 9.38 |
| Neoker, Irene | 7.73 | 7.73 | 15.46 |
| Nicka, Carl | 3.25 | 3.25 | 6.50 |
| Nicks, Edna | 3.38 | 3.38 | 6.76 |
| Noe, Esther | .13 | .13 | .26 |
| Nofzinger, Walter | 9.13 | 9.13 | 18.26 |
| Olewnicki, Genevieve | 3.20 | 3.20 | 6.40 |
| Olewnicki, Janet | 3.80 | 3.80 | 7.60 |
| Osterman, Katherine | 1.96 | 1.96 | 3.92 |
| Paliniewicz, Alfred | 1.43 | 1.43 | 2.86 |
| Pearl, Floyd | 8.93 | 8.93 | 17.86 |
| Pearl, Fred | 11.43 | 11.43 | 22.86 |
| Pearl, Harold | 4.49 | 4.49 | 8.98 |
| Pearl, Marie | 1.72 | 1.72 | 3.44 |
| Persinger, Thomas | 4.42 | 4.42 | 8.84 |
| Peters, Martha | 2.68 | 2.68 | 5.36 |
| Petrucci, Anthony | 1.51 | 1.51 | 3.02 |
| Phillips, Mary | .89 | .89 | 1.78 |
| Pierzina, Eva | 8.35 | 8.35 | 16.70 |
| Pretzer, Arthur | 5.99 | 5.99 | 11.98 |
| Pretzer, Lucille | 10.97 | 10.97 | 21.94 |
| Rachow, John | 12.75 | 12.75 | 25.50 |
| Rauschelbach, Adelia | 7.96 | 7.96 | 15.92 |
| Redlawski, Helen | 5.41 | 5.41 | 10.82 |
| Redlawski, Wilma | 7.32 | 7.32 | 14.64 |
| Reeder, Wesley | 8.02 | 8.02 | 16.04 |
| Rettig, Ann | 5.23 | 5.23 | 10.46 |
| Richards, Elaine | .21 | .21 | .42 |
| Ritter, John | .98 | .98 | 1.96 |
| Rohrbeck, Luella | 5.62 | 5.62 | 11.24 |

| Name | Amount Due as Overtime Compensation | Liquidated Damages | Total |
|---|---|---|---|
| Rondo, Ruth | .03 | .03 | .06 |
| Rożanski, Mary | .06 | .06 | .12 |
| Sabatini, Rita | .06 | .06 | .12 |
| Sahr, Emma | .60 | .60 | 1.20 |
| Sahrow, Elmer | 13.76 | 13.76 | 27.52 |
| Sawicki, Mary | 9.64 | 9.64 | 19.28 |
| Schalm, John | 3.27 | 3.27 | 6.54 |
| Schalm, Mikel | 2.32 | 2.32 | 4.64 |
| Scheible, Edna | 1.66 | 1.66 | 3.32 |
| Scheible, Mary | 6.46 | 6.46 | 12.92 |
| Schippocasse, Albert | .26 | .26 | .52 |
| Schleussler, Marion | 2.04 | 2.04 | 4.08 |
| Schoof, Carl | .02 | .02 | .04 |
| Schramm, Beatrice | .03 | .03 | .06 |
| Schroeder, George | 18.76 | 18.76 | 37.52 |
| Schroeder, Leona | 6.50 | 6.50 | 13.00 |
| Schroeder, Shirley | 6.20 | 6.20 | 12.40 |
| Scheutzler, Florence | .86 | .86 | 1.72 |
| Schulte, Rita | 7.41 | 7.41 | 14.82 |
| Schuster, Josephine | 8.80 | 8.80 | 17.60 |
| Schwartz, Clarence | 10.32 | 10.32 | 20.64 |
| Shattuck, Russell | 1.12 | 1.12 | 2.24 |
| Sibbe, Arthur | 15.33 | 15.33 | 30.66 |
| Sievart, Carl | 6.38 | 6.38 | 12.76 |
| Siewart, Paul | 13.70 | 13.70 | 27.40 |
| Smith, Preston | 6.45 | 6.45 | 12.90 |
| Snyder, Eileen | 4.63 | 4.63 | 9.26 |
| Socia, Lillian | 6.81 | 6.81 | 13.62 |
| Sonntag, Esther | .92 | .92 | 1.84 |
| Sopha, Esther | .60 | .60 | 1.20 |
| Stafford, Glen | 7.04 | 7.04 | 14.08 |
| Stafford, Leo | 8.72 | 8.72 | 17.44 |
| Stark, B. | .11 | .11 | .22 |
| Starkey, Ilene | .15 | .15 | .30 |
| Starkey, Paul | 3.75 | 3.75 | 7.50 |
| Stoll, Alice | .89 | .89 | 1.78 |

| Name | Amount Due as Overtime Compensation | Liquidated Damages | Total |
|---|---|---|---|
| Strong, Dorothy | 3.86 | 3.86 | 7.72 |
| Suer, Edwin | 4.65 | 4.65 | 9.30 |
| Sutton, Frank | .54 | .54 | 1.08 |
| Tebo, Chesley | 10.98 | 10.98 | 21.96 |
| Teise, Elsie | .01 | .01 | .02 |
| Tesner, Tom | 1.68 | 1.68 | 3.36 |
| Thoel, Louis | 6.74 | 6.74 | 13.48 |
| Thoel, Walter | .98 | .98 | 1.96 |
| Thomas, Albert | 1.40 | 1.40 | 2.80 |
| Thomas, Aletha | .26 | .26 | .52 |
| Thurman, Louis | 8.45 | 8.45 | 16.90 |
| Thurman, Viola | 3.59 | 3.59 | 7.18 |
| Tupschov, Elizabeth | 9.86 | 9.86 | 19.72 |
| Trombley, Earl | 3.27 | 3.27 | 6.54 |
| Trombley, Ray | 12.54 | 12.54 | 25.08 |
| Ulrich, Eleanora | 7.00 | 7.00 | 14.00 |
| Vertin, Kathryn | .26 | .26 | .52 |
| Watkins, Albert | .87 | .87 | 1.74 |
| Watkins, Francis | 1.66 | 1.66 | 3.32 |
| Weier, Artilla | 4.04 | 4.04 | 8.08 |
| Weier, Delia | .05 | .05 | .10 |
| Weier, Edwin | .33 | .33 | .66 |
| Weier, Wilbert | 1.51 | 1.51 | 3.02 |
| Weiner, Dorothy | 3.75 | 3.75 | 7.50 |
| Weiner, John | 4.61 | 4.61 | 9.22 |
| Wendt, William | 5.50 | 5.50 | 11.00 |
| Wilder, Robert | .76 | .76 | 1.52 |
| Willey, Ray | .18 | .18 | .36 |
| Williams, Margaret | .20 | .20 | .40 |
| Yochum, Margaret | 5.12 | 5.12 | 10.24 |
| Zavaruka, Tinnie | 2.31 | 2.31 | 4.62 |
| Zieman, Lorraine | 1.14 | 1.14 | 2.28 |
| Zieman, Margaret | 1.28 | 1.28 | 2.56 |
| Zienert, Mildred | 6.60 | 6.60 | 13.20 |
| Zychski, Leona | 1.91 | 1.91 | 3.82 |
| Total | $1,207.87 | $1,207.87 | $2,415.74 |

## PETITION FOR FIXING OF BOND AND PROVIDING FOR STAY ON GIVING OF BOND

(Filed Aug. 29, 1944)

Comes now Mt. Clemens Pottery Company, defendant in the above entitled cause, by its attorneys, and shows unto this Honorable Court that it has instructed its attorneys to perfect, within the time limited by statute, an appeal to the Sixth Circuit Court of Appeals from the judgment entered herein on or about June 13, 1944, and that said appeal will be duly perfected within the time allowed therefor, and that the stay of proceedings hitherto granted herein expires on or about September 2, 1944, and that this defendant desires to have a stay of proceedings pending the determination of this cause on appeal, and hereby petitions this Honorable Court for an order fixing the amount of security which this defendant should give and furnish upon said appeal, and providing that upon the giving of said security all further proceedings of this Court shall be suspended and stayed until the determination of said appeal to the said United States Circuit Court of Appeals for the Sixth Circuit.

Respectfully submitted,
Albert E. Meder,
Frank E. Cooper,
11th Floor, Ford Building,
Detroit, Michigan.
Bert V. Nunneley,
Mt. Clemens Savings Bank Bldg.,
Mt. Clemens, Michigan.
Attorneys for defendant
Mt. Clemens Pottery Company.
By Frank E. Cooper.

Beaumont, Smith & Harris
Of Counsel
August ~~22~~ 21, 1944.

## ORDER FIXING AMOUNT OF SUPERSEDEAS AND APPEAL BOND AND PROVIDING FOR STAY ON GIVING OF BOND

(Filed Aug. 29, 1944)

At a session of said Court held in the Federal Building in Detroit, Michigan, this 29th day of August, 1944.

Present: Hon. Frank A. Picard, District Judge.

The defendant having filed a motion for an order to be made fixing the amount of security which defendant shall give and furnish in connection with its appeal from the judgment hitherto rendered herein to the United States Circuit Court of Appeals for the Sixth Circuit, and providing upon giving of said security all further proceedings of this Court be suspended and stayed until the determination of said appeal to said United States Circuit Court of Appeals for the Sixth Circuit,

Now, Therefore, It Is Ordered that upon the said defendant Mt. Clemens Pottery Company filing with the Clerk of this Court a good and sufficient bond in the sum of $10,000.00 (to the effect that if the defendant shall prosecute the said appeal to effect and answer all damages and costs if it fails to make good its plea, then the said obligation to be void, else to remain in full force and virtue) all further proceedings in this Court shall be and they are hereby suspended and stayed until the determination of said appeal in the said United States Circuit Court of Appeals for the Sixth Circuit.

Frank A. Picard,
District Judge.

## PETITION FOR ORDER DISPENSING WITH REPRODUCTION OF PHYSICAL EXHIBITS IN PRINTED RECORD

(Filed Sept. 7, 1944)

Now comes The Mt. Clemens Pottery Company, defendant herein, by its attorneys, and petitions this Honorable Court for an order dispensing with the reproduction in the printed record on appeal herein of the following physical exhibits:

1. Time clock cards, including Exhibits 1, 3, 5, 7-28, 31-42, 58, 62, 63, 74, 75, 82, 83, 93, 94, and 95. In this connection defendant shows unto the Court that several hundred time clock cards were received in evidence on the trial of said cause. These time clock cards could not be reduced accurately by any printing process inasmuch as they combine printed and handwritten words and figures. Any photostatic reproduction would fail to differentiate between the varied colors of various words and figures appearing on said time clock cards. An expense of several hundred dollars would be involved in any reproduction of these cards in the printed record. Any reproduction of such clock cards in the printed record would not serve the convenience of either Court or counsel but, on the contrary, any such reproduction would involve a wholly unnecessary expense and would serve only to unduly encumber the printed record. This defendant has designated for reproduction in full in the printed record one or more of such cards in order that the record will clearly and conveniently show the form and content thereof.

2. Annual earnings records of individual plaintiffs, including Exhibits 2, 6, 79, 85-89. These exhibits are large cards, tabulating the weekly earnings of individual plaintiffs. The form of the card is such as to render it impractical to reproduce them in printing, and extremely costly and inconvenient to attempt photostatic reproduction. This defendant has designated for reproduction in full in the printed record one or more of such cards in order that the printed record will clearly and conveniently show the form and content thereof. Further, for the other reasons set forth in detail with respect to the time clock cards, it would not serve the convenience of either Court or counsel to reproduce these annual earnings records in the printed record but would, on the contrary, unduly encumber the record. Further, the details of these individual earnings records have no bearing on issues in dispute herein.

3. Pay stubs, including Exhibits 4, 47, 48, and 59. These exhibits are samples of stubs issued to employees with their pay check. They were introduced to show the general method of the company in making wage payments and contain no data relevant to any issues in dispute herein.

4. Other miscellaneous physical exhibits, viz:

Payroll work sheets, including, for example, Exhibit 44. This is a large looseleaf volume containing several hundred large-sized pages, the same comprising work sheets used in computing the piecework earnings of employees of The Mt. Clemens Pottery Company. Comparatively few of the entries refer to any of the plaintiffs herein. These books show only the method of figuring wage payments and contain no data relevant to any issue here in dispute. This defendant has designated for reproduction in full in the printed record one or more of such

work sheets in order that the record will clearly and conveniently show the form and content thereof.

Exhibit 43, a bundle of rubber thumb cots which could not be reproduced in the printed record.

Exhibits 61 and 77, the same being decalcomania sheets which could not be reproduced in the printed record.

Exhibits 29 and 81, each containing numerous sheets showing payment of wages to a large group of employees in connection with an inspection conducted by the Wage Hour Division of the United States Department of Labor in 1939. The details of these sheets are in no way relevant to any issues here in dispute. Comparatively few of the names listed in these lengthy exhibits are those of plaintiffs herein.

Exhibit 49, a sheet of printed or mimeographed instructions said to have been posted in the Decorating Department, the same being wholly irrelevant to any disputed issues and inconvenient to reproduce in the printed record.

Exhibit 64, the Constitution of the United Pottery Workers of America. This is a booklet of several pages and reproduction would serve only to unduly encumber the printed record and increase unnecessarily the costs of preparing the same.

Exhibit 68, a printed copy of a collective agreement between Tampa Shipbuilding Company and the Metal Trades Department of the American Federation of Labor. This is a booklet of approximately forty-four pages, containing no information directly relevant to any of the issues in dispute herein, and the reproduction of the same in the printed record would serve only to unduly enlarge the same.

Exhibit 76, a large plan, showing the layout of the floor space in the Glost Belt Department. The reproduction thereof to the small size necessary for inclusion in the printed record would render the same practically illegible in many of its details.

Exhibit 90. A large map of the City of Mt. Clemens. This contains no data relevant to any issues in dispute herein and the reproduction thereof in the small size necessary for inclusion in the printed record would render it practically illegible in many of its details.

Respectfully submitted,
Albert E. Meder,
Frank E. Cooper,
11th Floor, Ford Building,
Detroit, Michigan.
Bert V. Nunneley,
Mt. Clemens Savings Bank Bldg.,
Mt. Clemens, Michigan.
Attorneys for defendant,
Mt. Clemens Pottery Company.
By Frank E. Cooper.

Beaumont, Smith & Harris
Of Counsel
August 22, 1944.

## ORDER DISPENSING WITH REPRODUCTION OF EXHIBITS IN PRINTED RECORD

(Filed Sept. 7, 1944)

At a session of said Court held in the Federal Building in Detroit, Michigan, this 7th day of September, 1944.

Present: Hon. Frank A. Picard, District Judge.

This cause having come on to be heard upon the petition of The Mt. Clemens Pottery Company, defendant herein, for leave to dispense with the reproduction in the printed record of certain physical exhibits, and the Court being fully advised in the premises, and on due consideration

It Is Hereby Ordered

That in the preparation of the printed record on appeal to the United States Circuit Court of Appeals for the Sixth Circuit the following exhibits will not be reproduced therein by printing or by photostatic processes, but that the same shall, in lieu of printing, be transmitted to the Clerk of the Sixth Circuit Court of Appeals as a part of the record herein, viz:

Time clock cards, including Exhibits 1, 3, 5, 7-28, 31-42, 58, 62, 63, 74, 75, 82, 83, 93, 94, and 95; Individual earnings records, including Exhibits 2, 6, 79, 85-89; Pay stubs, including Exhibits 4, 47, 48, and 59; Payroll record sheets such as Exhibit 44, and likewise Exhibits 29, 43, 61, 64, 68, 77, 81, and 90.

Frank A. Picard,
U. S. District Judge.

## NOTICE OF APPEAL TO CIRCUIT COURT OF APPEALS UNDER RULE 73

(Filed Sept. 8, 1944)

To: The Clerk of Court
Edward Lamb,
Lowell Goerlich,
Attorneys for Plaintiffs-Appellees

Notice is hereby given that the Mt. Clemens Pottery Company, defendant above named, hereby appeals to the Circuit Court of Appeals for the Sixth Circuit from the final judgment entered in this action on June 13, 1944.

Albert E. Meder,
Frank E. Cooper,
11th Floor Ford Building,
Detroit 26, Michigan.
Bert V. Nunneley,
Mt. Clemens Savings Bank Bldg.,
Mt. Clemens, Michigan.
Beaumont, Smith & Harris
Of Counsel
Attorneys for Defendant-Appellant

By Frank E. Cooper,
One of the attorneys for
Defendant-Appellant.

Sept. 8, 1944.

## SUPERSEDEAS AND APPEAL BOND

(Filed Sept. 8, 1944)

Know All Men By These Presents that we, Mt. Clemens Pottery Company, of Mt. Clemens, Michigan, as Principal, And Fidelity and Deposit Company of Maryland, a Maryland Corporation, of Baltimore, Maryland, as Surety, are held and firmly bound unto the Plaintiffs in the above entitled cause in the full and just sum of Ten Thousand And No/100 Dollars ($10,000.00), to be paid to the said parties, their heirs, executors, administrators, successors, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators jointly and severally by these presents.

Sealed with our seals and dated this 31st day of August, 1944.

Whereas, lately, in a suit pending in the United States District Court for the Eastern District of Michigan, between Steve Anderson, et al. plaintiffs, and Mt. Clemens Pottery Company, defendant, a judgment was rendered against the said defendant, and the said defendant has duly filed or is about to file notice of appeal from said judgment.

Now, the condition of the above obligation is such that if the said defendant Mt. Clemens Pottery Company shall prosecute its appeal with effect, and satisfy the said judgment in full, together with costs, interest, and damages for delay, if for any reason the appeal is dismissed or the judgment is affirmed, and shall satisfy in full such modification of the judgment, and such costs, interest, and

damages as the Appellate Court may adjudge and award, then the above obligation to be void, otherwise to remain in full force and effect.

Mt. Clemens Pottery Company,
By: Chas. E. Doll
J. Wilson Petrie
Fidelity and Deposit
Company of Maryland.
By: George Bortz,
Attorney-in-Fact.
M. Campeau
Approved by: Frank A. Picard,
District Judge.

## PROOF OF MAILING OF NOTICE OF APPEAL

(Filed Sept. 9, 1944)

United States of America,
Eastern District of Michigan—ss.

I, George M. Read, Clerk of the District Court of the United States for the Eastern District of Michigan, do hereby certify that I did, on the 9th day of September A.D. 1944, send by mail copy of the Notice of Appeal in the above entitled cause to the following named persons at the address given:

Edward Lamb & Lowell Goerlich, 1014 Edison Bldg., Toledo, Ohio.

George M. Read,
Clerk,
By: John J. Ginther,
Deputy-Clerk.

Dated: Detroit, September 9, 1944.

## DESIGNATION OF RECORD ON APPEAL BY DEFENDANT-APPELLANT

(Filed Sept. 8, 1944)

Comes now The Mt. Clemens Pottery Company, a Michigan corporation, by its attorneys, and pursuant to Rule 75 (a), Federal Rules of Civil Procedure, and Rule 10 (I) of the Rules of the Sixth Circuit Court of Appeals, files this designation of the portions of the record herein to be contained in the printed record on appeal.

### I.
### PLEADINGS, ORDERS, OPINIONS, JUDGMENT, ETC.

Defendant-Appellant hereby designates for printing in the record on appeal the following material pleadings, orders, findings of fact and conclusions of law, Master's report, and judgment, viz:

Table of calendar entries.

Complaint filed April 16, 1941.

Objections of Mt. Clemens Pottery Company to Interrogatories filed May 2, 1941.

Motions of the Mt. Clemens Pottery Company to limit scope of action and to strike certain allegations and to require furnishing of Bill of Particulars filed May 12, 1941.

Order denying motion to quash and dismiss entered June 13, 1941.

Designation of Albert Weier, et al.

Designation of Walter Selk, et al.

Designation of Harry May, et al.
Designation of Arthur Baxter, et al.
Designation of Ruth Gottschalk, et al.
Designation of Arthur Sibbe, et al.
Designation of H. Wilson, et al.
Bill of Particulars filed October 23, 1941.
Motion to strike or for further particulars filed November 1, 1941.
Order on motion of defendant to strike or for further particulars entered November 10, 1941.
Order extending time to file Amendment to the Bill of Particulars to December 15, 1941 entered November 24, 1941.
Amendment to Plaintiff's Bill of Particulars filed November 26, 1941.
Motion for Judgment and for Appointment of Special Master filed December 2, 1941. Hearing December 8, 1941.
Motion of Mt. Clemens Pottery Company to strike or for further particulars filed December 6, 1941. Hearing December 15, 1941.
Answer of Mt. Clemens Pottery Company to Motion for Judgment and for Appointment of Special Master filed December 12, 1941, omitting exhibits.
Order denying Motion for Judgment entered December 15, 1941.
Answer of Mt. Clemens Pottery Company and Motions to Dismiss and Strike filed January 2, 1942.
Order denying Plaintiff's request for Judgment without prejudice, etc., entered January 5, 1942.
Supplemental Order denying Plaintiff's request for Judgment without prejudice, etc., entered January 6, 1942.
Exceptions of Mt. Clemens Pottery Company to Supplemental Order of January 6, 1942 filed January 10, 1942.
Motion of Plaintiffs for Summary Judgment filed January 16, 1942. Hearing January 26, 1942.

Answer of Mt. Clemens Pottery Company to Motion for Summary Judgment filed January 24, 1942.

Order denying Motion for Summary Judgment entered January 27, 1942.

Order denying Motion for Summary Judgment and Referring Cause to Donald L. Quaife as Special Master entered January 28, 1942.

Supplemental Order denying Motion for Summary Judgment, etc., entered January 29, 1942.

Designation of Bill Behnke, et al.

Designation of Irene Nacker, et al.

Report of Special Master filed March 23, 1943.

Objections to Master's Report filed April 2, 1943.

Motion of Mt. Clemens Pottery Company for entry of Judgment on Report of Special Master filed April 3, 1943. Hearing April 12, 1943.

Order dismissing cause as to S. S. Kresge Co. with prejudice entered June 15, 1943.

Opinion of the Court entered July 2, 1943.

Motion of Plaintiffs to settle Findings of Fact, Conclusions of Law and for Judgment filed August 25, 1943.

Motion of Defendant requesting adoption of Findings and Conclusions.

Notice of settlement of findings of fact and conclusions of law.

Findings of Fact and Conclusions of Law filed September 13, 1943.

Preliminary Statement of Exceptions by defendant to Findings of Fact, etc., filed September 22, 1943.

Computations made in accordance with Court's findings filed December 11, 1943.

Notice of hearings on defendant's motion for findings, filed December 11, 1943.

Opinion of the Court filed March 3, 1944.

Motion to amend Findings of Fact and Conclusions of Law and for an entry of judgment filed May 24, 1944.

Objections to allowance of attorney fees filed June 12, 1944.

Judgment for plaintiffs in $2,415.74, attorney fees $2,000.00 and costs to be taxed entered June 13, 1944.

Petition for order dispensing with reproduction of physical exhibits in printed record.

Order fixing amount of Supersedeas and Appeal Bond and providing for stay on giving of bond.

Order dispensing with reproduction of exhibits in printed record.

Notice of Appeal.

Appeal Bond.

Appellant's designation of record on Appeal.

Appellant's statement of points on which appellant intends to rely.

## II.

## TRANSCRIPTS OF TESTIMONY AND ARGUMENTS

Defendant-Appellant hereby designates for inclusion in the printed record on appeal only the following portions of the transcripts of proceedings had before the Court in this cause, including the testimony of witnesses and arguments before the Court, viz:

### PROCEEDINGS OF DECEMBER 15, 1941

Print the following:

Hearings on motion for judgment by default and motion for particulars, December 15, 1941.

Line 10, page 2, through line 7, page 5.

Line 1 through line 6, page 6.

Line 5, page 7, through line 7, page 8.

Line 6 through line 11, page 13.
Line 17, page 13, through line 16, page 14.
Line 5 through line 13, page 15.
Line 11 through line 15, and word "else" on line 16, page 16.
Line 13, page 18, through line 21, page 18.
Line 4, page 20, through line 20, page 20.
Line 11, page 24, through line 13, page 25.
Line 22, page 27, through line 8, page 30.
Line 1, page 32, through line 22, page 39.
Line 1, through line 24, page 41.
Line 24, page 42, through line 14, page 43.
Line 2, through line 13, page 44.

## PROCEEDINGS OF JANUARY 26, 1942

Print the following:

Arguments on Motion of Plaintiffs for Summary Judgment, January 26, 1942.
Line 11, page 2, through line 17, page 14.

## PROCEEDINGS OF FEBRUARY 9, 1942

Print the following:

Hearings before Special Master, February 9, 1942.
Insert the words "Mr. Cooper" and print the last line on page 46, and lines 1 and 2 on page 47.
Line 8 through line 17, page 47.
Line 14 through line 23, page 48.
Line 19 through line 22, page 49.
Line 1, page 50, through line 5, page 51.
Line 9, page 73, through line 20, page 74.
Line 12, page 75, through line 5, page 77.
Lines 9 and 10, page 78.
Line 17, page 78, through line 16, page 79.

Summarize line 17, page 79, through line 7, page 86, as follows:

"Exhibits 1-1 FF and 2-2C objected to by counsel for defendant on grounds that they had not been identified properly and on grounds that time clock cards were irrelevant in proving amount of time worked. The Master overruled the objections except that Exhibit 2-2C is admitted pursuant to stipulation that it is defendant's earning record, 'but it will have to be explained by some employee who has charge of keeping the records, before it will mean anything to the Court'."

Line 8, page 86, through line 13, page 90.

Summarize line 14, page 90, through line 11, page 99, as follows:

"Counsel for defendant objected on grounds that witness should not be permitted to testify as to activities of other employees, at least without specifying names and occasions; and that witness' testimony should be limited to his own claims. Objection overruled."

Line 12, page 99, through line 3, page 100.

Summarize line 4, page 100, through line 10, page 106, as follows:

"Answer of witness stricken by Master as conclusion."

Line 10, page 106, through line 20, page 106.

Line 24, page 106, through line 7, page 107.

Line 5, page 108, through line 19, page 112.

Line 22, page 112, through line 2, page 113.

Line 5, page 113, to the bottom of page 117.

Lines 3 and 4 on page 122.

Line 12, page 122, through line 8 on page 123.

Line 13 through line 22, page 123.

Summarize from line 23 on page 123 through line 17, page 125, as follows:

"Counsel for defendant moved that answer be stricken on grounds of immateriality. Objection overruled."

Insert "The Master" and print from line 24, page 182, through line 12, page 183.
Line 19, page 185.
Line 6 through line 10, page 186.
Line 19, page 187, through line 20, page 191.
Line 6, page 203, through line 22, page 204.
Line 1 through line 6, page 205.
Line 16, page 205, through line 8, page 211.
Line 12, page 211, through line 17, page 215.
Line 2, page 216, through line 17, page 218.
Line 4, page 221, through line 22, page 221.
Line 10, page 222, through line 10, page 228.
Line 12 through line 16, page 229.
Line 20, page 229, through line 23, page 230.
Line 1, page 231, through line 22, page 234.
Line 25, page 234, through line 19, page 235.
Line 10, page 238, through line 13, page 239.
Line 12 through line 17, page 241.
Line 1, page 242, through line 15, page 243.
Line 18, page 243, through line 14, page 244.
Line 17, page 244, through line 1, page 245.
Line 6, page 245, through line 13, page 247.
Line 25, page 247, through line 21, page 248.
Line 1, through line 8, page 249.
Line 14, page 249, through line 1, page 250.
Line 15, page 250, through line 6, page 251.
Line 1 through line 12, page 252.
Line 12, page 253, through line 20, page 254.
Line 5 through line 10, page 256.
Summarize line 11, page 256, through line 11, page 260, as follows:
"Counsel for plaintiffs objects."
Line 12, page 260, through line 25, page 261.
Line 17, page 263, through line 18, page 264.
Line 6 through line 8, page 265.
Lines 12 through 14, and line 17, page 268.
Line 19, page 268, through line 1, page 269.
Line 6 through line 9, page 269.
Line 12, page 269, through line 19, page 270.

Line 18, page 125, to bottom of page 125.
Line 23, page 126, through line 4, page 131.
Line 10 through line 18, page 131.
Line 22, page 135, through line 1, page 136.
Line 6 through line 8, page 137.
Line 22, page 137, through line 2, page 138.
Lines 6 through 8, page 138.
Line 13, page 138, through line 23, page 140.
Line 1, page 142, to bottom of page 144.
Line 18, page 145, through line 16, page 146.
Line 19, page 146, through line 17, page 147.
Lines 19 through 21, page 148.
Lines 4 through 21, page 149.
Line 6, page 150, through line 16, page 152.
Line 2, page 153, through line 1, page 154.

## PROCEEDINGS OF FEBRUARY 12, 1942

Print the following:

February 12, 1942

Summarize line 1, page 155, through line 19, page 170, as follows:

"Counsel for defendant moved to strike testimony of witness Trombley as to doing additional work after punching out at time clock on grounds that it related to a new claim, outside scope of complaint and bill of particulars. Motion taken under advisement."

Line 8, page 171, through line 12, page 172.

Summarize from line 12, page 172, through line 7, page 174, as follows:

"Exhibit 4-4I received in evidence as example of method of making wage payments."

Line 8, page 174, through line 6, page 180.
Line 5, page 181, through line 14, page 181.
Line 1, page 182, through line 16, page 182.

Line 23, page 274, through line 2, page 276.
Line 4 through line 9, page 277.
Line 17, page 277, through line 5, page 278.
Line 18, page 279, through line 10, page 280.
Line 16, page 283, through line 25, page 283.
Line 12, page 284, through line 4, page 285.
Line 3 through line 5, page 290.
Line 11, page 291, through line 6, page 292.
Line 24, page 293, through line 8, page 294.
Line 13, page 294, through line 7, page 295.
Line 16 page 295, through line 10, page 297.
Line 20, page 297, through line 1, page 298.
Line 13, page 298, through line 6, page 300.
Line 11, page 300, through line 13, page 302.
Line 17, page 302, through line 5, page 303.
Line 9 through line 20, page 303.
Line 13, page 315, through line 16, page 316.
Line 20 through line 25, page 316.
Line 6, page 317, through line 16, page 318.
Line 1, page 323, through line 2, page 324.
Line 18, page 326, throuhg line 18, page 327.
Line 4, page 328, through line 10, page 329.
Line 6, page 330, through line 18, page 331.
Line 5, page 335, through line 23, page 338.
Line 12, page 340, through line 1, page 344.

## PROCEEDINGS OF FEBRUARY 16, 1942

Print the following:

February 16, 1942

Line 22, page 351, through line 2, page 352.
Line 11, through line 21, page 352.
Line 7, page 353, through line 2, page 354.
Line 6, page 354, through line 14, page 355.
Line 24, page 355, through line 1, page 359.
Line 4 through line 12, page 359.
Line 19, page 359, through line 21, page 360.

Line 1, page 361, through line 10, page 362.
Line 23, page 365, through line 25, page 365.
Line 4, page 366, through line 12, page 368.
Line 1, page 370, through line 3, page 373.
Line 10, page 373, through line 18, page 377.
Line 11, page 378, through line 18, page 380.
Line 24, page 382, through line 15, page 383.
Line 17, page 387, through line 13, page 388.
Line 21, page 391, through line 2, page 392.
Line 15, page 396, through line 20, page 396.
Line 21, page 402, through line 1, page 403.
Line 6 through line 8, page 403.
Line 15 through line 23, page 403.
Line 18, page 407, through line 15, page 408.
Line 20, page 419, through line 25, page 420.
Line 4, page 424, through line 3, page 426.
Line 1 through line 11, page 427.
Line 3, page 428½, through line 2, page 429.
Lines 10 and 11, page 429.
Lines 5 through 7, page 445.
Line 17, page 455, through line 1, page 456.
Line 1, page 468, through the word "in" on line 4, page 468.
Line 17, page 468, through line 1, page 472.
Lines 13 and 14, page 472.
Lines 21 through 25, page 478.
Line 19, page 479, through line 16, page 482.
Line 11, page 484, through line 21, page 484.
Lines 17 through 19, page 494.

## PROCEEDINGS OF FEBRUARY 17, 1942

Print the following:

February 17, 1942

Line 1 through line 9, page 502.
Line 11 through 14, page 502.
Line 16, page 502.
Line 20, page 502, through line 16, page 509.

Line 24, page 509, through line 3, page 514.
Line 8, page 514, through line 10, page 517.
Line 14, page 517, through line 3, page 519.
Line 12, page 519, through end of page 529½.
Line 20, page 530, through line 4, page 531.
Line 11 through line 17, page 537.
Line 22, page 538, through line 8, page 539.
Line 24, page 540, through word "No" on line 2, page 542.
Line 8, page 542, through line 11, page 543.
Line 3, page 545 (eliminating the word "No" immediately following "Q") through the word "Yes" on line 5, page 546.
Line 1, page 547, through line 1, page 550.
Line 4, page 550, through line 17, page 551.
Line 1, page 553, through line 1, page 554.
Line 14, page 554, through line 30, page 556.
Line 24, page 556, through line 6, page 559.
Summarize lines 7 through 13 on page 559 by correcting the transcript and substituting "1938" for "1940" on Line 24, page 558.
Line 14, page 559, through line 1, page 560.
Line 8, page 560, through line 1, page 561.
Line 15, page 561, through the word "immaterial" on line 8, page 562.
Line 12, page 582, through line 7, page 583.

## PROCEEDINGS OF FEBRUARY 19, 1942

Print the following:

### February 19, 1942

Line 8, page 638, through line 22, page 649.
Lines 19 and 20, page 650.
Line 4, page 651, through line 18, page 652.
Line 24, page 668, through the word "right" on line 6, page 669.

Line 4, page 693, through line 2, page 699.
Line 8, page 699, through line 2, page 700.
Line 2, through line 19, page 706.
Line 7, through line 12, page 707.
Line 13, page 708, through line 23, page 709.

PROCEEDINGS OF FEBRUARY 20, 1942

Print the following:

February 20, 1942

Lines 20 through 24, page 714.
Lines 10 through 18, page 715.
Line 21, page 715, through line 8, page 727.
Line 13, page 727, through line 9, page 728.
Line 12, page 732, through line 4, page 733.
Line 10, page 733, through line 24, page 736.
Line 9, page 738, through line 5, page 739.
Line 9, page 743, through line 19, page 743.
Line 15, page 748, through line 13, page 750.
Line 2, through line 25, page 752.
Lines 8 through 10, page 761.
Lines 8 and 9, page 762.
Line 8, page 763.
Lines 11 through 16, page 763.
Lines 22 and 23, page 763.
Line 25, page 764, through line 2, page 765.
Line 18 through line 23, page 766.
Line 2, page 767, through line 3, page 768.
Line 2, through word "objection" on line 22, page 769.
Line 18, page 772, through line 9, page 773.
Lines 13 and 14, page 773.
Line 17, page 773, through line 7, page 774.
Line 21, page 775, through line 25, page 779.
Line 6, page 780, through line 16, page 783.
Line 14, page 787, through line 25, page 789.
Line 3 through line 23, page 792.

Line 9 through line 20, page 796.
Line 3, page 799, through line 6, page 801.
Line 4 through line 19, page 802.
Line 1 through word "object" on line 12, page 803.
Line 19 through line 22, page 804.
Line 13, page 814, through line 12, page 815.
Line 22, page 815, through word "objection" on line 12, page 816.
Line 14 through line 17, page 818.
Line 25, page 820, through line 18, page 821.
Line 11, through line 13, page 823.
Line 4, page 824.
Line 17, page 824, through line 8, page 825.
Line 21, page 825, through line 25, page 825.
Line 7 through line 15, page 827.
Summarize line 16, page 827, through line 25 on page 830, as follows:
"Exhibit 29 received."
Line 1, page 831, through line 8, page 834.
Line 22, page 834, through line 25, page 834.
Line 25, page 840, through line 5, page 841.
Line 19, page 841, through line 22, page 842.
Line 9, page 843, through line 5, page 844.
Line 1, page 847, through line 25, page 847.
The phrase "Mr. Cooper: I object to that" on line 5, page 848.
Starting with the word "In" on line 10, page 848, through line 18, page 848.
Line 12, page 849, through line 24, page 850.
Line 7, page 851, through line 23, page 851.
Line 1 through line 8, page 852.
Line 12, page 852, through line 14, page 854.
Line 25, page 854.
Line 17, page 857, through line 14, page 858.
Lines 19 and 20, page 859.
Line 20, page 860, through line 18, page 861.
Line 2 through line 23, page 862.
Line 1 through line 7, page 863.
Line 20, page 865, through line 25, page 865.

Line 17, through line 20, page 866.
Summarize from line 21, page 866, through line 4, page 869, as follows:
"Walter Selk, Alfred Erke, Robert Daniels, Carl Schoof, Ray Wiley, Paul Frazo. Joyce Brousseau was a finisher on flat ware. Wells Clay was a batter-out. Albert Schiappacasse was another jiggerman."
Line 5, page 869, through line 11, page 870.
Line 23, page 871, through line 23, page 872.
Line 5, page 873, through line 11, page 875.
Line 14, page 875, through line 18, page 886.

PROCEEDINGS OF FEBRUARY 24, 1942

Print the following:

February 24, 1942

Line 1 through word "earnings" on line 13, page 896.
Insert "the Master" and print lines 8 through the word "way" on page 15, line 898.
Line 1, page 902, through line 8, page 903.
Insert "Q" and start with word "You" on line 10, page 904, through line 25, page 904.
Summarize from line 5, page 905 to line 25, page 905, as follows:
"Lucille Sabo, Lucille Pretzer. The Savarino girls also rode with me. There were three of them. There was another girl, I can't remember her name now."
Line 1, page 906, through line 5, page 907.
Line 10 through line 17, page 907.
Line 4 through line 10, page 908.
Summarize line 11, page 908, through line 9, page 911, as follows:
"Robert Daniels. I worked with him for about five months in the summer of 1940, I guess. Before that I worked a couple of months with Joe Versure. I worked with Walter Selk. I think I started to

work with him in December, 1940, and I was still working with him when the strike was called in April, 1941. I worked with Marvin Goldenbogen in the fall or early winter of 1940. I worked with Art Dagno for about a year, probably back in 1939."

Line 18 through line 21, page 913.

~~Summarize from line 22, page 913, to line 25, page~~ 915, as follows:

"Eleanor Bahorski was the last girl I worked with in there. She was working with me before the first strike. She worked in my group about a year. At various times Jean Tewksbury worked in our group. Maude Raleigh and Martha Raleigh worked in our group three or four different periods in 1939 and 1940. That is all I can remember now."

Line 1 through word "Sure" on line 5, page 916.

Line 17, page 916, through line 16, page 917.

Line 1 through line 17, page 919.

Line 12, page 921 through line 22, page 922.

Line 20 through line 22, page 925.

Line 1, page 926, through line 25, page 928.

Line 13, page 932, through line 16, page 933.

Line 14 through line 22, page 936.

Line 13, page 937, through line 1, page 939.

Line 6 through line 8, page 940.

Line 21, page 940, through line 19, page 945.

Line 4 through line 18, page 946.

Line 24, page 946, through line 4, page 947.

Line 18, page 947, through line 3, page 948.

Line 5, page 950, through line 3, page 951.

Line 11, page 951, through line 17, page 955.

Line 4, page 956, through line 9, page 961.

Line 20, page 961, through line 12, page 962.

Line 10, page 965, through line 25, page 965.

Line 4 through line 23, page 966.

Line 11, page 967, through line 23, page 969.

Line 1, page 972, through line 4, page 973.
Line 21, page 973, through line 17, page 974.
Line 21, page 975, through line 10, page 976.
Line 23, page 978, through line 24, page 981.
Line 14, page 983, through line 11, page 984.
Line 8, page 987, through line 9, page 989.
Line 19 through line 23, page 989.
Lines 9 and 10, page 990.
Lines 16, 17 and 18, page 991.
Line 8, page 992, through line 20, page 995.
Lines 7 through 9, page 998.
Line 12 through line 22, page 998.
Lines 3 through 5, page 999.
Lines 10 through 14, page 999.
Lines 2 and 3, page 1000.
Print "The Master"; and begin with the word "I" on line 17, page 1021, through line 6, page 1024.
Line 8, page 1024, through line 11, page 1028.
Line 15, page 1028, through line 2, page 1030.
Lines 13 through 16, page 1032.
Lines 19 through 25, page 1032.
Line 25, page 1033, through line 21, page 1034.
Line 25, page 1036, through line 10, page 1037.
Line 16, page 1037, through line 23, page 1038.
Line 11, page 1039, through line 2, page 1042.
Line 4 through line 7, page 1043.
Line 8, page 1045, through line 6, page 1048.
Line 15 through line 22, page 1048.
Line 4 through line 11, page 1050.
Line 11 through line 17, page 1058.
Line 17, page 1060, through line 7, page 1061.
Line 17, page 1061.
Line 14, page 1063, through line 4, page 1066.
Line 22, page 1066, through line 1, page 1067.
Line 3, page 1068, through line 23, page 1068.
Line 7, page 1073, through line 2, page 1075.
Lines 2 and 3, page 1076.

Line 16, page 1076, through line 15, page 1077.
Line 8 through line 10, page 1078.
Line 15, page 1078, through line 18, page 1079.
Line 2 through line 6, page 1085.
Line 1, page 1086, through line 7, page 1088.
Lines 1 and 2, page 1089.
Lines 23 and 24, page 1089.
Line 2 through line 9, page 1090.
Line 17 through line 20, page 1091.
Lines 22 and 23, page 1091.
Line 7 through line 22, page 1092.
Line 6 through line 21, page 1094.
Line 14, page 1095, through line 23, page 1096.
Line 8, page 1097, through line 16, page 1098.
Line 1, page 1099.
Line 7, page 1099, through line 21, page 1099, and in line 20 correct transcript by changing "estimation" to "explanation."
Line 1, page 1100, through line 12, page 1102.
Line 19, page 1102, through line 7, page 1106.
Line 20, page 1106, through line 5, page 1107.
Line 11, page 1107, through line 4, page 1108.
Lines 13 and 14, page 1108.
Line 23, page 1108, through line 18, page 1110.

## PROCEEDINGS OF FEBRUARY 25, 1942

Print the following:

February 25, 1942

Line 7, page 1121, through line 13, page 1122.
Line 18, page 1122, through line 22, page 1122.
Lines 4 and 5, page 1124.
Line 10 through line 21, page 1124.
Line 4, page 1125, through line 22, page 1125.
Line 24, page 1140, through line 12, page 1142.

Line 19, page 1143, through line 1, page 1144.
Line 20, page 1144, through line 17, page 1145.
Line 23, page 1151, through word "worked" on line 19, page 1152.
Line 7, page 1153, through line 20, page 1156.
Line 8, page 1157, through line 25, page 1162.
Line 14, page 1163, through line 6, page 1165.
Lines 12 through 18, page 1165.
Line 23, page 1165, through line 20, page 1167.
Line 6, page 1168, through line 18, page 1168.
Lines 18 through 22, page 1169.
Line 16, page 1174, through line 3, page 1176.
Line 21, page 1177, through line 8, page 1178.
Line 11, page 1179, through line 5, page 1180.
Lines 11 through 13, page 1180.
Line 17, page 1180, through line 7, page 1181.
Line 1 through line 6, page 1184.
Lines 24 and 25, page 1184, through line 5, page 1185.
Line 12, page 1185, through line 23, page 1186.
Line 14, page 1189, through line 10, page 1190.
Line 9, page 1191, through line 13, page 1192.
Line 10, page 1193, through line 8, page 1195.
Line 6, page 1198, through line 15, page 1198.
Line 4, page 1199, through line 6, page 1201.
Lines 11 and 12, page 1201.
Line 23, page 1201, through line 4, page 1204.
Line 20, page 1204, through line 23, page 1205.
Line 16, page 1207, through line 9, page 1209.
Line 4, page 1210, through line 1, page 1211.
Lines 9 through 18, page 1212.
Lines 1 through 7, page 1214.
Line 14, page 1214, through line 23, page 1215.
Lines 1 through 9, page 1225.
Line 24, page 1225, through line 7, page 1226.
Line 25, page 1226, through line 3, page 1227.
Line 11, page 1227, through line 7, page 1230.
Change word "day" on lines 8 and 9, page 1230, to "pay."

Line 10, page 1230, through line 24, page 1236.
Line 5, page 1237, through line 2, page 1238.
Line 18, page 1238, through line 17, page 1239.
Line 12, page 1240, through line 21, page 1240.
Line 2, page 1241.
Lines 16 through 20, page 1241.
Line 3, page 1242, through line 10, page 1242.
Lines 13 through 16, page 1242.
Line 22, page 1242, through line 15, page 1243.
Line 3, page 1244.
Lines 12 through 16, page 1244.
Line 7, page 1245, through line 7, page 1247.
Line 2, page 1250, through line 24, page 1250.
Line 22, page 1254, through line 5, page 1255.
Line 7, page 1257, through line 6, page 1258.
Line 18, page 1258, through line 2, page 1259.
Lines 11 and 12, page 1260.
Line 5, page 1252, through line 1, page 1263.
Line 21, page 1263, through line 2, page 1264.
Line 19, page 1265, through line 25, page 1265.
Line 10, page 1268, through line 4, page 1270.
Line 5, page 1271, through line 8, page 1272.
Line 12, page 1273, through line 2, page 1274.
Line 4, page 1275, through line 4, page 1278.
Lines 14 through 18, page 1278.
Line 25, page 1278, through line 16, page 1281.
Line 15, page 1283, through line 9, page 1284.
Line 16, page 1284, through line 5, page 1286.
Line 16, page 1288, through line 25, page 1288.
Line 11, page 1291, through line 25, page 1291.

Summarize from line 1, page 1292, through line 8, page 1294, as follows:

"Susie Crew; Marion Setty; Loraine Jackson; Elsie Graham, Margaret Henry; Margaret Dekiere; Leona DeBussehere; Irene Miller, Wilma Redlowski. Ilene Snyder. Those include both brushers and dipping girls. Among the men dippers were Steve Ander-

son, Howard Bliemeister, Louis Thurman, Nelson Luchtman. That is all I can think of right now. Counsel for plaintiffs state their purpose is to get before the Court the persons who are similar to the witness. Counsel for defendant moved to strike on the grounds that giving the names of other persons in the same department is not evidence as to the hours claimed to be worked by such persons. Master rules that he does not see much relevancy but will let the list stand."

Line 9, page 1294, through line 3, page 1296.
Line 11, page 1296, through line 15, page 1298.
Line 1, through line 11, page 1299.
Line 26, page 1299, through line 10, page 1301.
Lines 15, 16, and 17, page 1301.
Line 3, page 1302, through line 17, page 1306.
Line 12, page 1307, through line 22, page 1307.
Line 25, page 1309, through line 15, page 1310.
Line 22, page 1310, through line 1, page 1313.
Line 7, page 1314, through line 5, page 1315.
Line 18, page 1315, through line 4, page 1316.
Line 1, page 1317, through line 6, page 1320.
Line 12, page 1320, through line 20, page 1320.
Line 23, page 1321, through line 13, page 1324.
Lines 18 through 22, page 1324.

PROCEEDINGS OF FEBRUARY 26, 1942

Print the following:

February 26, 1942

Lines 7, 8 and 9, page 1346, and line 19, page 1346, through line 6, page 1347.
Line 24, page 1348, through line 8, page 1349.
Line 13, page 1350, through line 5, page 1352.
Line 16, page 1355, through line 3, page 1356.
Lines 19 through 24, page 1358.

Lines 2 through 23, page 1359.
Lines 8 through 13, page 1361.
Lines 22 through 24, page 1361.
Lines 1 through 15, page 1363.
Lines 4 through 6, page 1364.
Lines 1 through 5, page 1370.
Lines 7 through 20, page 1371.
Line 7, page 1378, through line 2, page 1379.
Lines 16 through 21, page 1380.
Line 8, page 1381, through line 23, page 1383.
Line 14, page 1384, through line 11, page 1388.
Line 3, page 1389, through line 14, page 1390.
Line 19, page 1390, through line 11, page 1392.
Lines 5 through 17, page 1393.
Lines 23 and 24, page 1393.
Lines 5, 6 and 7, page 1394.
Lines 1 through 3, page 1395.
Lines 17 through 20, page 1395.
Lines 24 and 25, page 1395.
Lines 1 through 5, page 1396.
Line 24, page 1397, through line 1, page 1399.
Lines 7 through 16, page 1399.
Lines 1 through 4, page 1400.
Lines 7 through 9, page 1400.
Lines 13 through 21, page 1400.
Lines 3 through 11, page 1401.
Lines 9 through 14, page 1407.
Line 1, page 1408, through line 11, page 1409.
Lines 16 through 24, page 1409.
Line 8, page 1412, through line 9, page 1414.
Line 17, page 1414, through line 20, page 1415.
Lines 1 through 23, page 1417.
Lines 3 through 11, page 1418.
Lines 7 through 16, page 1419.
Line 21, page 1420, through line 3, page 1421.
Line 23, page 1425, through word "don't" on line 2, page
Lines 2 through 15, page 1427.

Lines 12 through 17, page 1428.
Lines 3 through 5, page 1428½.
Lines 1 through 6, page 1431.
Lines 12 through 20, page 1431.
Lines 10 through 20, page 1433.
Line 23, page 1433.
Lines 8 through 21, page 1434.
Line 22, page 1435, through word "objection" on line 25, page 1435.
Line 19, page 1436, through line 5, page 1438.
Lines 13 through 19, page 1457.
Lines 24 through 25, page 1457.
Line 1, page 1458.
Line 4, page 1459, through line 10, page 1460.
Line 20, page 1460, through line 13, page 1461.
Line 22, page 1461, through line 3, page 1464.
Lines 15 through 17, page 1467.
Line 22, page 1467, through line 11, page 1468.
Line 21, page 1468, through line 9, page 1469.
Line 20, page 1480, through line 17, page 1482.
Line 19 starting with word "Bisque" on page 1482, through line 13, page 1483.
Line 21, page 1483, through line 11, page 1484.
Lines 13 through 22, page 1485.
Lines 4 through 13, page 1486.
Lines 21 through 25, page 1486.
Line 22, page 1489, through line 6, page 1491.
Lines 18 through 20, page 1491.
Lines 7 through 11, page 1492.
Line 15, page 1482, through line 12, page 1495.
Line 1. page 1496, through line 7, page 1498.
Line 4, page 1501, through line 3, page 1503.
Line 10, page 1503, through line 7, page 1504.
Line 8, page 1507, through line 5, page 1508.
Line 15, page 1510, through line 11, page 1511.

PROCEEDINGS OF FEBRUARY 27, 1942

Print the following:

February 27, 1942

Examination of Charles E. Doll, Sr., continued.

Line 3, page 1515, through word "objection" on line 2, page 1516.
Lines 9 through 11, page 1520.
Line 7, page 1521, through line 7, page 1523.
Lines 1 and 2, page 1524.
Lines 9 and 10, page 1524.
Lines 13 and 14, page 1524.
Lines 19 and 20, page 1524.
Line 9, page 1525, through line 19, page 1529.
Line 7, page 1531, through line 20, page 1532.
Lines 1 through 3, page 1533.
Line 15, page 1533, through line 7, page 1534.
Lines 1 through 7, page 1534.
Lines 24 and 25, page 1535.
Lines 12 through 23, page 1538.
Lines 8, page 1541, through line 2, page 1543.
Line 23, page 1544, through line 2, page 1546.
Lines 17 through 21, page 1546.
Line 11, page 1547, through line 10, page 1548.
Line 7, page 1557, through line 6, page 1559.
Line 14, page 1565, through line 1, page 1566.
Lines 8 through 15, page 1566.
Lines 2 through 8, page 1568.
Lines 15 through 22, page 1571.
Lines 10 through 21, page 1573; and add "Objection Overruled."
Line 15, page 1575, through line 21, page 1576.
Lines 6 through 19, page 1577.
Lines 24, page 1579, through line 22, page 1580.
Lines 1 and 2, page 1581.
Lines 1 through 16, page 1596.
Line 1, page 1597, through line 6, page 1598.
Lines 10 through 17, page 1598.

Line 22, page 1598, through line 22, page 1599.
Lines 16 through 22, page 1600.
Lines 3 through 18, page 1601.
Line 7, page 1602, through line 19, page 1604.
Lines 8 through 20, page 1605.
Line 16, page 1607, through line 24, page 1609.
Line 13, page 1610, through line 6, page 1611.
Line 7, through line 21, page 1615.
Line 12, page 1616, through line 16, page 1617.
Line 16, page 1618, through line 25, page 1619.
Line 16, page 1620, through line 12, page 1623.
Line 6, page 1624, through line 16, page 1625.
Lines 7 through 10, page 1626.
Line 1, page 1627.
Line 4, page 1627, through line 22, page 1630.
Lines 10 through line 22, page 1635.
Lines 1 through 3, page 1642.
Lines 14 through 17, page 1642.
Lines 7 through 19, page 1643.
Line 24, page 1643, through line 2, page 1644.
Line 5, page 1647, through line 5, page 1649.
Line 14, page 1651, through line 23, page 1651.
Line 14, page 1653, through line 3, page 1654.
Lines 5 through 10, page 1655.
Lines 17 through 25, page 1655.
Lines 15 through 20, page 1656.
Line 18, page 1658, through line 20, page 1659.
Line 4, page 1661, through line 4, page 1662.

## PROCEEDINGS OF MARCH 3, 1942

Print the following:

March 3, 1942

Summarize line 1, page 1687, through line 14, page 1703, as follows:

"Counsel for defendant renew motion to strike testimony concerning alleged deductions from pay."

Line 14, page 1703, through line 8, page 1704.
Line 6, page 1708, through line 2, page 1709.
Line 25, page 1709, through line 1, page 1710.
Lines 16 through 22, page 1710.
Insert "The Master:" and print lines 2 and 3, page 1711.
Line 7, page 1712, through line 2, page 1714.
Line 2, at word "Before" through line 11, page 1715.
Line 8, page 1716, through line 19, page 1718.
Line 23, page 1718, through line 15, page 1720.
Line 20, page 1722, through line 14, page 1723.
Line 7, page 1736, through line 23, page 1736.
Lines 6 through 19, page 1738.
Line 7, page 1767, through line 12, including "1940." page 1768.
Lines 7 through 19, page 1769.
Line 4, pages 1780, through line 19, page 1781.
Lines 1 through 10, page 1782.
Line 14, page 1784, through line 3, page 1793.
Lines 12 through 14, page 1793.
Line 19, page 1793.
Lines 24 and 25, page 1793.
Line 3, page 1794, through line 16, page 1795.
Line 9, page 1798, through line 7, page 1799.
Lines 15 through 25, page 1799.
Line 11, page 1800, through line 7, page 1801.
Line 15, page 1801, through line 18, page 1804.
Line 22, page 1806, through line 10, page 1808.
Line 4, page 1812, through line 1, page 1813.
Line 10, page 1813, through line 7, page 1815.
Line 25, page 1815, through line 21, page 1816.
Lines 3 through 13, page 1818.
Line 13, page 1822, through line 7, page 1823.
Line 21, page 1824, through line 12, page 1825.
Line 12, page 1826, through line 19, page 1829.
Line 25, page 1829.
Line 6, page 1830, through line 16, page 1831.
Lines 21 and 22, page 1831.
Line 20, page 1832, through line 6, page 1833.

Line 20, page 1833, through line 7, page 1834.
Line 18, page 1834, through line 10, page 1835.
Lines 2 through 11, page 1836.
Line 17, page 1836, through line 2, page 1837.

## PROCEEDINGS OF MARCH 4, 1942

Print the following:

### March 4, 1942

Lines 14 through 20, page 1838.
Lines 2 through 9, page 1839.
Lines 3 through 9, page 1841½.
Line 11, page 1842, through line 25, page 1843.
Line 7, page 1844, through line 17, page 1845.
Line 23, page 1845, through line 1, page 1846.
Lines 2 and 3, page 1847.
Lines 13 through 19, page 1848.
Lines 13 through 15, page 1849.
Lines 10 through 25, page 1850.
Lines 5 and 6, page 1853.
Lines 16 through 25, page 1853.
Line 1, page 1854, through line 3, page 1865.
Line 6, page 1865, through line 15, page 1867.
Line 15, page 1868, through line 5, page 1870.
Lines 17 through 19, page 1870.
Lines 14 through 18, page 1871.
Line 23, page 1873, through line 17, page 1875.
Line 13, page 1890, through line 18, page 1891.
Lines 1 through line 20, page 1892.
Lines 15 and 16, page 1893.
Line 17, page 1894, through line 20 to word "to" and add "58-MM". p. 1897.
Start at word "to" on line 25, page 1897, through word "cross-examination" on page 1900, line 16.
Line 14, page 1943, through line 14, page 1944.
Line 19, page 1944, through line 2, page 1946.

Line 18, page 1959, through line 11, page 1961.
Lines 17 through 20, page 1961.
Line 3, page 1962, through line 18, page 1964.
Lines 7 through 20, page 1968.
Line 13, page 1969, through line 1, page 1970.
Line 3 through line 9, page 1971.
Lines 6 through 16, page 1972.
Lines 10 through 23, page 1974.
Line 13, page 1975, through line 4, page 1976.
Line 22, page 1976, through line 13, page 1977.
Insert "Mr. Nunneley" and print line 8, p. 1978, through line 22, page 1978.
Line 3, page 1979, through line 17, page 1982.
Line 22, page 1982, through line 15, page 1985.
Lines 3 through 13, page 1986.
Line 20, page 1986, through line 24, page 1987.
Lines 16 through 18, page 1988.
Line 8, page 1989, through line 16 page 1990.
Lines 12 through 17, page 1991.
Line 3, page 1992, through line 20, page 1992.
Lines 1 through 10, page 1992½.
Line 1, page 1993, through line 2, page 1994.
Line 19, page 1995, through line 11, page 1996.
Lines 20 through 24, page 1996.
Line 9, page 1998, through line 25, page 1998.
Lines 6 through 10, page 2002.
Line 14, page 2003, through word "objection" on line 17, page 2004.
Insert "The Master:" and print line 2, page 2015, through line 6, page 2015.
Lines 17 through 25, page 2015.
Lines 14 through 22, page 2017.
Lines 1 through 4, page 2018.
Line 4, through line 11, page 2025.
Line 13, page 2026, through line 1, page 2027.
Lines 13 through 21, page 2028.
Lines 12 and 13, page 2029.
Line 11, page 2031, through line 20, page 2032.
Line 6, page 2033, through line 25, page 2033.

Line 6, page 2034.
Lines 6 through 24, page 2036.
Line 11, page 2037.
Line 1, page 2038, through line 2, page 2043.

PROCEEDINGS OF JUNE 8, 1942

Print the following:

June 8, 1942

Line 16, page 2049, through line 3, page 2061.
Line 6, page 2064, through line 8, page 2075.
Lines 18 through 25, page 2076.
Line 26, page 2077.
Lines 3 through 8, page 2078.
Line 16, page 2078, through line 12, page 2079.
Lines 17 through 19, page 2079.
Line 11, page 2080, through line 5, page 2083.
Lines 16 through 19, page 2083.
Line 25, page 2083, through line 4, page 2085.
Line 7, page 2086, through line 19, page 2086.
Line 15, page 2087, through line 10, page 2089.
Line 19, page 2089, through line 15, page 2090.
Line 18, page 2092, through line 16, page 2093.
Line 23, page 2093, through line 2, page 2094.
Line 24, page 2094, through line 13, page 2095.
Lines 1 through 16, page 2099.
Start at word "I," line 11, through line 18, page 2100.
Lines 20 through 25, page 2102.
Line 13, page 2105, through line 9, page 2106.
Line 20, page 2106, through line 2, page 2108.
Line 21, page 2108, through line 4, page 2109.
Lines 1 through 4, page 2110.
Lines 14 through 16, page 2110.
Lines 3 through 14, page 2111.
Lines 8 and 9, page 2114.
Line 13, page 2114, through line 7, page 2115.

Line 25, page 2116.
Lines 14 through 22, page 2119.
Line 25, page 2119, through line 17, page 2120.
Lines 22 through 24, page 2133.
Lines 2 and 3, page 2134.
Lines 16 through 24, page 2134.
Lines 5 through 10, page 2135.
Lines 8 through 13, page 2136.
Lines 18 through 25, page 2136.
Lines 1 and 2, page 2137.
Lines 12 through 17, page 2137.
Line 25, page 2138.
Line 22, page 2139, through line 2, page 2140.
Line 12 through 18, page 2140.
Lines 3 through 9, page 2141.
Line 25, page 2141, through line 9, page 2142.
Line 1 through line 12, page 2143.
Line 15, page 2143, through line 1, page 2147.
Line 10, page 2147, through line 11, page 2149.
Lines 10 and 11, page 2150.
Line 3, page 2151.
Line 6 through line 7, page 2151.
Lines 10 through 12, page 2151.
Line 8, page 2152.
Lines 9 through 21, page 2154.
Lines 12 through 19, page 2155.
Lines 2 through 7, page 2156.
Line 1, page 2158, through line 6, page 2159.

PROCEEDINGS OF JUNE 9, 1942

Print the following:

June 9, 1942

Lines 2 through 20, page 2166.
Line 23, page 2166, through line 20, page 2167.
Line 17, page 2168, through line 2, page 2170.
Lines 18 through 20, page 2170.

Lines 17 through 19, page 2171.
Lines 5 through line 10, page 2172.
Lines 17 through 25, page 2172.
Line 21, page 2173, through line 7, page 2174.
Line 24, page 2174, through line 3, page 2175.
Lines 8 through 18, page 2175.
Line 18, page 2176, through line 6, page 2177.
Lines 1 through 4, page 2178.
Lines 10 through 12, page 2182.
Lines 10 through 14, page 2183.
Line 18, page 2183, through line 18, page 2184.
Line 23, page 2185, through line 9, page 2186.
Line 19, page 2186, through line 1, page 2187.
Line 3, page 2193, through line 6, page 2194.
Lines 8 through 10, page 2195.
Line 18, page 2195, through line 11, page 2196.
Line 17, page 2196, through line 7, page 2199.
Lines 10 through 12, page 2199.
Lines 3 through line 7, page 2200.
Lines 1 through 8, page 2201.
Lines 9 through line 22, page 2203.
Lines 14 through 20, page 2207.
Lines 2 through 6, page 2208.
Lines 18 and 19, page 2208.
Line 23, page 2208, through line 2, page 2209.
Line 7, page 2210.

## PROCEEDINGS OF JUNE 16, 1942

Print the following:

June 16, 1942

Line 12, page 2216, through line 2, page 2217.
Line 19, page 2217, through line 5, page 2219.
Line 15, page 2219, through line 22, page 2221.
Line 12 through 15, page 2222.
Summarize line 16, page 2222, through line 6, page 2225 as follows:

"Witness demonstrates the aisles which were followed."
Line 7, page 2225, through line 15, page 2232.
Insert (Exhibits 30-A and 65 Received in Evidence) after line 15, page 2232.
Line 23, page 2234, through line 2, page 2235.
Lines 11 through 14, page 2235, and line 15 up to word "convenient."
Lines 21 through 24, page 2235.
Line 11, page 2238, through line 22, page 2247.
Line 18, page 2249, through line 6, page 2249.
Line 21, page 2253, through line 9, page 2254.
Lines 1 through 5, page 2255.
Line 8, page 2255, through line 7, page 2256.
Line 18, page 2256, through line 20, page 2262.
Lines 1 through 25, page 2263.
Lines 3 through 7, page 2264.
Lines 12 through 20, page 2264.
Lines 1 through 14, page 2265.
Lines 20, page 2265, through line 8, page 2266.
Line 25, page 2266, through line 4, page 2267.
Line 17, page 2268, through line 1, page 2270.
Line 5, page 2270, through line 5, page 2278.
Lines 3 through 5, page 2281.
Line 17, page 2281, through line 7, page 2282.
Line 21, page 2285, through line 16, page 2286.
Line 22, page 2286, through line 23, page 2287.
Lines 19 through 24, page 2289.
Lines 5 through 22, page 2290.
Line 4, page 2291, through line 19, page 2292.
Line 5, page 2293, through line 10, page 2293.
Line 11, page 2294, through line 10, page 2299.
Line 24, page 2299, through line 11, page 2301.
Line 17, page 2301, through line 15, page 2302.
Lines 8 through 10, page 2303.
Line 15, page 2303, through line 19, page 2304.
Line 5, page 2305, through line 16, page 2306.
Line 25, page 2306, through line 13, page 2307.

Insert "Objection Overruled," after line 13, page 2307.
Line 19, page 2307, through line 2, page 2309.
Line 24, page 2309, through line 23, page 2313.
Line 2 through line 21, page 2314.
Line 18, page 2315, through line 25, page 2316.
Line 13, page 2318, through line 22, page 2323.
Line 9, page 2324, through line 9, page 2325.
Lines 14 through 17, page 2328.
Line 8, page 2331, through line 2, page 2332.
Lines 10 through 14, page 2332.
Line 6, page 2333, through line 2, page 2334.
Lines 11 through 18, page 2334.
Lines 6 through 14, page 2335.
Line 20, page 2335, through line 13, page 2339.
Line 20, page 2340, through line 6, page 2354.
Line 14, page 2354, through line 25, page 2354.
Lines 1 through 6, page 2354½.
Line 11, page 2359, through line 9, page 2360.
Lines 1 through 15, page 2366.
Lines 22, page 2366, through line 1, page 2367.
Line 6, page 2367, through line 11, page 2376.
Line 3, page 2380, through line 6, page 2382.

## PROCEEDINGS OF JUNE 17, 1942

Print the following:

June 17, 1942

Line 17, page 2386, through line 13, page 2387.
Lines 20 through 23, page 2387.
Lines 7 through 12, page 2389.
Lines 4 through 19, page 2390.
Line 25, page 2390, through line 14, page 2391.
Line 1, page 2393, through line 17, page 2400.
Line 25, page 2400, through line 17, page 2402.

Lines 13 through 21, page 2407.
Lines 3 through 20, page 2408.
Line 25, page 2413, through line 9, page 2414.
Line 14, page 2414, through line 11, page 2420.
Line 16, page 2420, through line 13, page 2421.
Line 15, page 2425, through line 1, page 2426.
Lines 14 through word "exactly" on line 18, page 2426.
Lines 8 through 14, page 2427.
Line 18, page 2428, through line 6, page 2431.
Lines 8 through 12, page 2432.
Line 6, page 2433, through line 8, page 2434.
Lines 4 through 13, page 2437.
Lines 4, p. 2438 through line 8, page 2439.
Lines 6 through 9, page 2440.
Line 22, page 2440, through line 25, page 2443.
Lines 16 through 24, page 2445.
Line 4, page 2446, through line 24, page 2449.
Line 18, page 2450, through line 1, page 2451.
Lines 13 through "Mr. Phillips?" on line 19, page 2451.
Line 24, page 2451.
Lines 9 through 19, page 2457.
Line 22, page 2457.
Line 17, page 2459, through line 18, page 2460.
Line 8, page 2461, through line 14, page 2462.
Line 11, page 2463, through line 15, page 2464.
Lines 5 through 19, page 2465.
Lines 3 through 6, page 2466.
Lines 9 through 14, page 2466.
Line 20, page 2466, through line 13, page 2468.
Line 14, page 2468, through line 9, page 2472.
Lines 11 through 24, page 2474.
Line 5, page 2475, through line 25, page 2475.
Line 3, page 2476, through line 9, page 2487.
Line 20, page 2487, through line 1, page 2488.
Lines 11 through 15, page 2488.
Lines 3 through 22, page 2489.
Line 11, page 2490, through line 14, page 2499.

## PROCEEDINGS OF JUNE 18, 1942

Print the following:

June 18, 1942

Line 10, page 2500, through line 1, page 2504.
Lines 24 and 25, page 2504.
Line 21, page 2505, through line 1, page 2506.
Line 7, page 2506, through line 16, page 2517.
Line 19, page 2517, through line 15, page 2519.
Line 5, page 2520, through line 3, page 2526, and insert "Objection Overruled."
Lines 17 through 25, page 2526.
Lines 2 and 3, page 2529.
Line 4, page 2531, through line 5, page 2533.
Line 10, page 2533, through line 6, page 2534.
Line 14, page 2534, through line 10, page 2539.
Line 25, page 2540, through line 4, page 2542.
Line 20, page 2542, through word "Overruled" on line 21, page 2543.
Lines 8 and 9, page 2544.
Line 1, page 2544½, through line 18, page 2545.
Line 15, page 2546, through line 11, page 2552.
Line 4, page 2553, through line 18, page 2554.
Line 24, page 2554, through line 3, page 2555.
Line 11, page 2555, through line 4, page 2557.
Line 13, page 2557, through line 3, page 2563.
Line 12, page 2564, through line 25, page 2565.
Line 3, page 2566, through line 3, page 2567.
Line 14, page 2567, through line 14, page 2568.
Line 19, page 2568, through line 17, page 2569.
Line 23, page 2569, through line 18, page 2572.
Line 16, page 2573, through line 17, page 2575.
Line 1, page 2576, through line 6, page 2582.
Line 11, page 2582, through line 1, page 2583.
Lines 9 through 19, page 2583.
Line 24, page 2584, through line 12, page 2585.

Line 24, page 2585.
Lines 5 through 9, page 2586.
Line 18, page 2586, through line 3, page 2587.
Lines 9 through 11, page 2587.
Line 14, page 2588, through line 7, page 2591.
Line 24, page 2591, through line 18, page 2592.
Line 23, page 2592, through line 8, page 2594.
Line 11, page 2596, through line 12, page 2597.
Line 22, page 2597, through line 11, page 2602.
Line 20, page 2602, through line 24, page 2603.
Line 15, page 2604, through line 26, page 2605.
Line 19, page 2606, through line 12, page 2607.
Line 6, page 2608, through line 14, page 2612.
Line 19, page 2612, through line 19, page 2614, and add "Objection Overruled" after line 19, page 2614.
Line 8, page 2615, through line 22, page 2615, and add "Objection Overruled" after line 19, page 2614.
Line 24, page 2617, through line 12, page 2619.
Line 19, page 2619, through line 10, page 2620.
Lines 1 through 4, page 2621, and add "Objection" after line 4, page 2621.
Line 11, page 2622, through line 9, page 2623.
Line 9, page 2626, through line 2, page 2627.
Lines 5 through 8, page 2627.
Line 20, page 2627, through line 5, page 2628.
Lines 20 through 24, page 2629.
Lines 16 through 23, page 2630.
Line 6, page 2631, through line 3 to word "Objection" on page 2632.
Line 18, page 2634, through line 1, page 2635.
Line 8, page 2635, through figure "80-C" on line 9, page 2635.
Lines 1 through 5, page 2637.
Line 24, page 2637, through line 2, page 2638.
Lines 6 through 16, page 2638.
Line 2, page 2639, through line 18, page 2641.
Lines 7 through 10, page 2642.
Line 24, page 2648, through line 3, page 2649.

Lines 12 and 13, page 2649.
Lines 18 through 20, page 2649.
Line 3, page 2651, through line 25, page 2651.
Lines 7 through 11, page 2652.

## PROCEEDINGS OF JUNE 19, 1942

Print the following:

June 19, 1942

Lines 21 through 25, page 2653.
Lines 2 through 11, page 2655.
Lines 16 through 19, page 2655.
Lines 8 through 12, page 2656.
Lines 1 through 5, page 2657.
Line 1, page 2658, through line 16, page 2660.
Line 3, page 2661, through line 16, page 2662.
Line 25, page 2662, through line 22, page 2671.
Lines 1 through 3, page 2686.
Lines 10 through 17, page 2686.
Line 1 through 12, page 2687.
Line 18, page 2687, through line 4, page 2688.
Line 11, page 2688, through line 2, page 2692.
Line 14, page 2692, through line 25, page 2692.
Lines 8 through 13, page 2693.
Lines 19 through 25, page 2693.
Line 1, page 2694, through line 22, page 2700.
Line 4, page 2701, through line 25, page 2701.
Lines 2 through 18, page 2703.
Lines 21 through 24, page 2703.
Line 12, page 2704, through line 25, page 2704.
Lines 12 through 16, page 2705.
Lines 2 through 5, page 2706.
Line 9, page 2706, through line 8, page 2707.
Lines 6 through line 11, page 2711.
Line 22, page 2711, through line 14, page 2712.
Lines 1 and 2, page 2713.
Line 23, page 2713, through line 17, page 2716.

Lines 1 through 5, page 2717.
Lines 5 through word "specific," on line 6, page 2719.
Line 25, page 2719, through line 15, page 2721.
Line 14, page 2722, through line 7, page 2726.
Lines 14 through 16, page 2726.
Line 20, page 2726, through line 12, page 2729.
Line 20, page 2729, through line 7, page 2730.
Line 14, page 2730, through line 1, page 2732.
Lines 14 through 21, page 2733.
Lines 9 through 13, page 2734.
Line 6, page 2735, through line 23, page 2735.
Lines 5 through 7, page 2736.
Lines 15 through 17, page 2736.
Line 1, page 2737, through line 6, page 2738.
Line 23, page 2738, through line 1, page 2740.
Line 8, page 2740, through line 15, page 2741.
Lines 11 through 15, page 2742.
Lines 1 through 16, page 2743.
Line 21, page 2743, through line 5, page 2746.
Line 21, page 2746, through line 13, page 2748.
Line 1, page 2749, through line 13, page 2752.
Line 20, page 2752, through page 2755, line 22.
Line 9, page 2756, through line 5, page 2757.
Line 12, page 2758, through line 25, page 2759.
Line 10, page 2760, through line 5, page 2761.
Lines 15 through 22, page 2761.
Lines 3 through 6, page 2762.
Lines 9 and 10, page 2762.
Line 17, page 2762, through line 16 to word "Objection," page 2770.
Line 2, page 2771.
Line 7, page 2771, through line 8, page 2773.
Line 7, page 2774, through line 25, page 2774.
Line 3, page 2775, through line 13, page 2778.
Line 25, page 2778, through line 19, page 2779.
Line 23, page 2779, through line 10, page 2783.
Line 1, page 2784, through line 19, page 2788.
Line 1 through line 4 and add "Objection Sustained,"

page 2789.
Lines 11 through 24, page 2791.
Lines 12 through 14, page 2792.
Line 14, page 2793, through line 2, page 2799.
Line 24, page 2799, through line 25, page 2800.
Line 16, page 2802, through line 6, page 2803
Lines 8 through 22, page 2805.

PROCEEDINGS OF JUNE 22, 1942

Print the following:

June 22, 1942

Line 22, page 2807, through line 3, page 2808.
Lines 6 through 11, page 2808.
Line 20, page 2808, through line 21, page 2809.
Line 25, page 2809, through line 15, page 2810.
Line 21, page 2810, through line 7, page 2811.
Lines 19 through 24, page 2811.
Lines 6 through 11, page 2812.
Lines 3 through 15, page 2813.
Lines 19 through 23, page 2813.
Line 3, page 2814, through line 25, page 2817.
Line 25, page 2820, through line 5, page 2821.
Line 14, page 2821, through line 9, page 2824.
Line 18, page 2824, through line 8, page 2838.
Line 7, page 2839, through word "Objection" on line 25, page 2841.
Line 1, page 2856, through line 25, page 2857.
Line 24, page 2861, through line 25, page 2861.
Lines 18 through 25, page 2862.
Line 10, page 2864, through line 18, page 2865.
Line 3, page 2866, through line 14, page 2866.
Lines 23 and 24, page 2866.
Line 16, page 2867, through line 1, page 2868.
Line 7, page 2869, through line 5, page 2870.
Line 11, page 2870, through line 10, page 2872.

Line 25, page 2872, through line 20, page 2873.
Lines 5 through 19, page 2874.
Lines 7 through 25, page 2875.
Lines 10 through 22, page 2885.
Line 1, page 2888.
Lines 6 through 10, page 2888.
Line 3, page 2889, through line 2, page 2890.
Lines 7, 8 and 9, page 2890.
Lines 2 and 3, page 2891.
Lines 8 through 10, page 2891.
Lines 15 and 16, page 2891.
Line 24, page 2891, through line 4, page 2893.
Lines 4 through 11, page 2894.
Lines 4 through 12, page 2895.
Lines 16 through 22, page 2896.
Lines 10 through 15, page 2897.
Line 22, page 2897, through line 21, page 2900.
Line 1 through line 10, page 2901.
Line 20, page 2901, through line 2, page 2902.
Line 12, page 2909, through line 25, page 2910.
Line 18, page 2911, through line 2, page 2917.
Lines 2 through 8, page 2921.
Line 21, page 2921, through line 25, page 2921.
Line 8, page 2922, through line 19, page 2924.
Line 22, page 2926, through line 3, page 2930.
Line 1, page 2935, through line 22, page 2936.
Lines 1 through 14, page 2937.
Line 12, page 2940, through line 3, page 2941.
Lines 7 through 14, page 2944.
Lines 7 through 22, page 2945.
Line 28, page 2948, through line 4, page 2949.
Lines 15 through 22, page 2949.
Line 3, page 2950, through line 4, page 2951.
Line 14, page 2951, through line 15, page 2952.
Line 2, page 2955, through line 7, page 2956.
Lines 3 through 8, page 2957.
Lines 5 through 7, page 2959.
Lines 15 through 22, page 2959.

Lines 4 through 11, page 2962.
Lines 4 through 8, page 2963.
Lines 13 through 15, page 2963.
Line 19, page 2963, through line 6, page 2964.
Line 12, page 2964, through line 16, page 2965.
Lines 2, page 2966, through line 17, page 2966.

## PROCEEDINGS OF JUNE 23, 1942

Print the following:

June 23, 1942

Line 1 through 7, page 2973.
Lines 7 through 15, page 2976.
Line 7, page 2978, through line 7, page 2982.
Line 19, page 2982, through line 16, page 2984.
Line 2, page 2985, through line 18, page 2992.
Lines 4 through 9, page 2997.
Lines 1 through 10, page 3016.
Lines 13 through 17, page 3017.
Line 23, page 3024, through line 4, page 3026.
Line 22, page 3026, through line 8, page 3027.
Line 21, page 3027, through line 10, page 3030.
Line 12, page 3031, through line 8, page 3032.
Lines 5 through 16, page 3056.
Line 2, page 3057, through line 13, page 3059.
Summarize from line 14, page 3059, through line 17, page 3070, as follows:

"Exhibits 84, 5A-MM, 2 A-C, 6 A-C, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 32, 33, 36, 37, 38, 39-A-AA, 40, 41, 42, 80 A-C, 85 A-B, 86 A-C, 87 A-C, 88 A-C, 89, 89-A, 90 were received in evidence. The witness marked on Exhibit 90 the location of the Pottery (by the letter 'P') and the downtown section of Mt. Clemens (by the letter 'X')."

Line 18, page 3070, through line 21, page 3073.

Line 25, page 3073, through line 13, page 3077.
Line 24, page 3077, through line 6, page 3079.
Line 25, page 3079, through line 13, page 3080.
Line 6, page 3081, through line 5, page 3085.
Line 18, page 3085, through line 1, page 3089.
Line 19, page 3089, through line 10, page 3092.

PROCEEDINGS OF JUNE 24, 1942

Print the following:

June 24, 1942

Lines 11 through 13, page 3094.
Line 16, page 3094, through line 21, page 3095.
Line 4, page 3097, through line 12, page 3099.
Lines 5 through 9, page 3100.
Line 20, page 3104, through line 10, page 3106.
Lines 8 through 12, page 3109.
Line 24, page 3112, through line 2, page 3113.
Line 12, page 3116, through line 13, page 3118.
Lines 13 through 19, page 3120.
Line 6, page 3124, through line 4, page 3126.
Lines 4 through 8, page 3127.
Line 4, page 3128, through line 25, page 3128.
Line 2, page 3135, through line 17, page 3136.
Lines 6 through 10, page 3137.
Insert "The Master" and pick up line 5, page 3139 through line 11, page 3141.
Line 19, page 3141, through line 13, page 3143.
Lines 1 through 5, page 3144.
Line 4, page 3145, through line 18, page 3146.
Lines 21 through 24, page 3148.
Line 13, page 3149, through line 4, page 3150.
Line 13, page 3150, through line 4, page 3152.
Line 12, page 3153, through line 10, page 3154.
Line 7, page 3157, through line 6, page 3158.
Line 4, page 3159, through line 2, page 3160.

Lines 15 through 20, page 3161.
Lines 6 through 14, page 3162, and insert "Objection Sustained."
Line 1, page 3167, through line 14, page 3175.
Line 9, page 3176, through line 10, page 3178.
Line 14, page 3181, through line 5, page 3182.
Line 1, page 3183, through line 16, page 3186.
Line 24, page 3187, through line 4, page 3191.
Line 14, page 3191, through line 3, page 3191½.
Line 1, page 3192, through line 10, page 3199.
Line 24, page 3203, through line 2, page 3204.
Line 11, page 3204, through line 6, page 3205.
Lines 17 through 20, page 3205.
Line 3, page 3206, through line 11, page 3210.
Lines 11 through 13, page 3215.
Lines 12 through 17, page 3217.
Line 21, page 3218, through line 9, page 3220.
Line 25, page 3220, through line 20, page 3226.
Line 15, page 3227, through line 11, page 3229.
Line 14, page 3230, through line 7, page 3231.
Line 25, page 3231, through line 5, page 3237.
Line 14, page 3238, through line 20, page 3239.
Line 24, page 3241, through line 18, page 3243.
Lines 1 through 9, page 3244.
Line 23, page 3244, through line 16, page 3250.
Line 18, page 3251, through line 13, page 3254.

## PROCEEDINGS OF JUNE 25, 1942

Print the following:

### June 25, 1942

Line 4, page 3256, through line 12, page 3258.
Line 22, page 3258, through line 25, page 3259.
Lines 10 through 15, page 3260.
Line 19, page 3261, through line 14, page 3265.
Lines 12 and 13, page 3266.

Line 10, page 3267, through line 15, page 3269.
Line 5, page 3270, through line 18, page 3272.
Lines 6 through 21, page 3273.
Line 8, page 3274, through line 11, page 3275.
Line 15, page 3276, through line 17, page 3277.
Line 16, page 3278, through line 24, page 3284.
Lines 3 through 16, page 3286.
Lines 3 through 8, page 3287.
Line 7, page 3290, through line 22, page 3291.
Line 6, page 3292, through line 25, page 3293.
Line 3, page 3295, through line 9, page 3296.
Lines 18 through 24, page 3296.
Lines 10 through 15, page 3297.
Lines 20 through 25, page 3297.
Line 3, page 3299, through line 16, page 3300.
Line 5, page 3301, through line 3, page 3302.
Line 20, page 3302, through line 14, page 3303.
Lines 4 through 8, page 3304.
Lines 17 through 23, page 3304.
Line 2, page 3305.
Line 11, page 3306, through line 21, page 3310.
Line 6, page 3313, through line 20 at word "Overruled.", page 3315.
Line 22, page 3316, through line 25, page 3316.
Line 16, page 3317, through line 11, page 3325.
Line 23, page 3325, through line 9, page 3327.
Lines 8 through 14, page 3329.
Lines 5 through 18, page 3330.
Lines 11 through word "testimony." on line 23, page 3331.
Line 1, page 3333, through line 17, page 3336.
Line 1, page 3337, through line 12, page 3338.
Lines 1 through 11, page 3339.
Lines 24 and 25, page 3339.
Line 14, page 3341, through line 4, page 3345.
Line 22, page 3345, through line 9, page 3346.
Line 13, page 3346, through line 23, page 3352.
Line 5, page 3353, through line 23, page 3356.
Lines 21 through 24, page 3357.

Line 1, page 3360, through line 14, page 3361.
Line 1, page 3362, through line 22, page 3367.
Line 13, page 3369, through line 5, page 3370.
Line 21, page 3370, through line 6, page 3373.
Lines 15 through 18, page 3373.
Line 11, page 3374, through line 25, page 3374.
Line 1, page 3375.
Line 16, page 3376, through line 5, page 3378.
Line 11, page 3378, through line 4, page 3379.
Line 24, page 3379, through line 25, page 3379.
Line 7, page 3381, through line 9, page 3382.
Lines 3 through 12, page 3383.
Line 22, page 3383, through line 5, page 3384.
Lines 18 through 20, page 3384.
Lines 12 through 20, page 3385.
Line 4, page 3386, through line 8, page 3387.
Line 7, page 3391, through line 2, page 3392.
Lines 22 through 25, page 3394.
Lines 9 through 12, page 3395.
Line 20, page 3397, through line 23, page 3398.
Lines 15 and 16, page 3399.
Line 21, page 3400, through line 25, page 3403.
Line 10, page 3404, through line 20, page 3405.
Lines 1 through 4, page 3406.
Line 3, page 3407, through line 17, page 3409.
Line 17, page 3411, through line 15, page 3413.
Lines 10 through 18, page 3414.
Lines 5 through 21, page 3416.

## PROCEEDINGS OF JUNE 26, 1942

Print the following:

June 26, 1942

Line 11, page 3418, through line 25, page 3418.
Line 10, page 3419, through line 12, page 3421.
Line 16, page 3431, through line 13, page 3432.
Lines 6 through 19, page 3433.

Line 10, page 3434, through line 2, page 3435.
Lines 13 through 26, page 3436.
Line 24, page 3437, through line 16, page 3438.
Lines 1 through 18, page 3439.
Lines 2 through 7, page 3440.
Lines 14 through 22, page 3441.
Line 1, page 3442, through line 19, page 3446.
Lines 11 through 13, page 3447.
Line 19, page 3447, through line 21, page 3450.
Lines 11, page 3451, through line 18, page 3452.
Line 25, page 3452, through line 11, page 3454.
Lines 18 through 20, page 3454.
Line 3, page 3455, through line 25, page 3461.
Line 1, page 3464, through line 5, page 3465.
Lines 18 through 21, page 3465.
Lines 13 through 16, page 3466.
Line 22, page 3466.
Lines 6 through 12, page 3468.
Lines 16 through 21, page 3469.
Lines 11 through 14, page 3473.
Lines 20 and 21, page 3473.
Line 1, page 3480, through line 11, page 3482.
Lines 8 through 16, page 3486.
Lines 6 through 9, page 3487.
Line 22, page 3487, through line 9, page 3492.
Line 20, page 3492, through line 10, page 3495.
Lines 10 through 23, page 3498.
Line 8, page 3501, through line 5, page 3502.
Line 15, page 3502, through line 9, page 3503.
Lines 3 through 13, page 3504.
Lines 1 through 14, page 3505.
Line 18, page 3506, through line 10, page 3508.
Line 23, page 3511, through line 19, page 3514.
Line 6, page 3515, through line 16, page 3516.
Lines 2 through 22, page 3522.
Line 3, page 3524, through line 21, page 3525.
Lines 3 through 24, page 3526.
Line 1, page 3530, through line 19, page 3531.
Line 16, page 3532, through line 10, page 3533.

Line 6, page 3534, through line 7, page 3535.
Lines 15 through 22, page 3535.
Line 2, page 3536, through line 14, page 3538.
Line 24, page 3538, through line 22, page 3539.
Line 10, page 3540, through line 8, page 3543.
Lines 16 through 19, page 3545.
Lines 1 through 17, page 3547.
Lines 24 and 25, page 3549.
Lines 7 through 14, page 3550.
Line 19, page 3550, through line 9, page 3551.
Line 22, page 3552, through line 25, page 3553.
Lines 20 through 24, page 3558.
Line 6, page 3559, through line 3, page 3560.
Lines 14 through 23, page 3560.

## PROCEEDINGS OF APRIL 12, 1943

Print the following:

Hearing on Exceptions to Master's Report, April 12, 1943.

Line 12, page 5, through line 21, page 6.
Line 4, page 7, through line 2, page 8.
Line 12, page 8, through line 15, page 9.
Lines 12 through 19, page 26.
Line 6, page 29, through line 17, page 30.
Lines 10 through 16, page 35.
Lines 16 through 22, page 38.

## PROCEEDINGS OF JUNE 8, 1943

Print the following:

Hearing on Exceptions to Master's Report, June 8, 1943.

Line 19, page 2, through line 24, page 4.
Line 9, page 11, through line 11, page 15.

Line 16, page 17, through line 13, page 18.
Lines 6 through 20, page 45.
Lines 3 through word "about" on line 9, page 90.
Lines 2 through 23, page 91.
Line 6, page 92, through line 25, page 94.
Lines 9 through 21, page 147.
Lines 18 through 22, page 148.

PROCEEDINGS OF SEPTEMBER 13, 1943

Print the following:

Hearing on Motions for Findings, etc., September 13, 1943.

Line 16, page 6, through line 5, page 7.
Lines 11 through 19, page 8.
Lines 7 through 25, page 10.
Line 1, page 12, through line 25, page 13.
Lines 6 through word "to" on line 10, page 14.
Line 13, page 19, through line 2, page 20.
Lines 14 through 25, page 21.

PROCEEDINGS OF JANUARY 4, 1944

Print the following:

Hearing on Motions to amend findings, etc., January 4, 1944.

Line 5, page 2, through line 5, page 3.
Lines 13 through 17, page 4.
Line 17, page 16, through word "it" on line 11, page 17.
Line 23, page 21, through line 14, page 22.
Line 24, page 23, through line 19, page 24.
Lines 5 through 20, page 29.
Line 15, page 33, through word "that" on line 8, page 35.
Lines 7 through 24, page 37.

## PROCEEDINGS OF JUNE 12, 1944.

Print the following:

Hearing on motions for judgment, etc., June 12, 1944.

Line 4, page 2, through line 16, page 5.

III.

Defendant-Appellant hereby designates for inclusion in the printed record on appeal the following exhibits, said exhibits to be reproduced in full, summarized (in form and style hereinafter designated), or omitted from from the printed record, all in accordance with the following designations, viz:

[Appellant's Designation of Exhibits is reproduced in full, infra, as a part of the printed record of exhibits, and to avoid unnecessary duplication, is not reprinted here.]

Albert E. Meder,
Frank E. Cooper,
11th Floor Ford Bldg.,
Detroit, 26 Michigan;
Bert V. Nunneley,
Mt. Clemens Savings Bank Bldg.,
Mt. Clemens, Michigan;
Beaumont, Smith & Harris,
Of Counsel,
Attorneys for Defendant-Appellant,
By Frank E. Cooper,
One of the Attorneys for Defendant-Appellant.

Sept. 8, 1944.

## CONCISE STATEMENT OF POINTS ON WHICH DEFENDANT-APPELLANT MT. CLEMENS POTTERY COMPANY INTENDS TO RELY

(Filed Sept. 8, 1944)

Pursuant to Rule 75(d) of the Federal Rules of Civil Procedure, the defendant-appellant Mt. Clemens Pottery Company, by Beaumont, Smith & Harris, Albert E. Meder, Bert V. Nunneley, and Frank E. Cooper, its attorneys, lists herewith the points on which it intends to rely in connection with its appeal from the judgment rendered herein under date of June 13, 1944, in the above entitled case:

1. The District Court erred in refusing to accept in full the Master's findings of fact and in on the contrary modifying the Master's findings of fact, there having been no showing that the Master's findings were in any respect clearly erroneous.

2. The District Court erred in finding that the plaintiffs or some of them started work before the regular starting time at the beginning of the work day and at the resumption of work after the lunch period, there being no substantial competent evidence to support such finding and the said finding being contrary to the great and overwhelming weight of the evidence and contrary to the findings of the Master.

3. The District Court erred in finding and ruling that in computing plaintiffs' hours of work there should be allowed five minutes for punching the clock plus an additional two minutes to go from the clock to their place

of employment, or a total of seven minutes, before the beginning of work in the morning, and that there should be allowed a total of five minutes at the resumption of work after the lunch period. Such finding and ruling is not supported by any substantial competent evidence and is contrary to law. It disregards the specific findings of the Master and is directly contrary to the clear and overwhelming preponderance of testimony. It constitutes a purely arbitrary formula, not supported by the testimony but based instead on speculation and conjecture.

4. The District Court erred in finding and ruling that in computing the hours of work of plaintiffs as employees of defendant Mt. Clemens Pottery Company there should be included in addition to the hours of work as computed by the Company the following:

(a) In cases where an employee punched his time clock card more than seven minutes before his regular starting time at the beginning of a shift, there shall be computed as part of his hours of work the number of minutes by which the punch-in time shown on his time card preceded seven minutes before the regular starting time.

(b) In cases where an employee punched his time clock card more than five minutes before his regular starting time after his lunch period, there shall be computed as part of his hours of work the number of minutes by which the punch-in time shown on his time card preceded five minutes before the regular starting time.

Such finding and ruling is contrary to law. It is not supported by any substantial competent evidence but is contrary to the great and overwhelming preponderance of the testimony, and contrary to the Master's findings of fact, which were not shown to be in any way erroneous. It is based upon mere speculation and conjecture.

5. The District Court erred in ruling that plaintiffs were entitled to recover overtime pay on the basis of the formula set forth in the Court's opinion and finding. Said formula is not based on the testimony of any of the plaintiffs, and is not supported by any evidence in the case. It is on the contrary based on surmise, speculation, and conjecture; and represents at best an estimate (which estimate is unsupported by the evidence) of the amount of overtime which might possibly have been worked by certain employees under specified hypothetical conditions, but which (as shown by undisputed testimony) could not possibly have been worked by many of the plaintiffs under the conditions actually existing, and which was not shown to have been worked by any one of the plaintiffs even during a single work week.

6. The District Court erred in holding that extra compensation voluntarily paid the plaintiffs each year (equal to approximately four per cent of their wages) over and above their agreed wages and overtime, could not be applied by way of set-off in reduction of the amounts of extra compensation found by the Court to be due the plaintiffs, over and above their agreed wages, as extra compensation for overtime; and erred in finding that the extra compensation so paid was a gratuity or gift.

7. The District Court erred in allowing recovery based on a conjectural estimate as to the average amount of overtime which might have been worked, it being uncontradicted that this average as applied to certain employees would result in overpayments, and it not being shown that any employee worked the amount of overtime credited to him under the formula adopted by the District Court.

8. The District Court erred in failing and refusing to find that none of the employees had worked any amount

of overtime for which they were not compensated in accordance with the provisions of the Fair Labor Standards Act.

9. The District Court erred in basing its decision on three charts (Exhibits 97-99) which showed only for three particular days the "ring-in" times of a group of employees (not the plaintiffs) using a particular time clock, and which did not show when the plaintiffs rang in at the time clock on any particular day, and which did not show when any employee started work on any day.

10. The District Court erred in refusing to follow the ruling of the Fifth Circuit Court of Appeals in Tennessee Coal, Iron and Railroad Company v. Muscoda Local, 137 F. 2d 176 (affirmed 321 U. S. 590). As the District Court pointed out in its opinion, if it had followed the decision of the Fifth Circuit Court of Appeals in that case it would have affirmed the Master's report and dismissed plaintiffs' claims. The District Court, however, conceived that the decision of the Fifth Circuit Court of Appeals was incorrect and refused to follow it. In view of this statement by the District Court the decision should be reversed under the decision above noted.

11. The District Court erred in finding that the employees contended that they were required to report for work approximately fourteen minutes before the hour in the morning and that they immediately started productive work. The employees' claim was based on the theory that their hours of work should be computed from the minute they punched the time clock, regardless of when they started work.

12. The District Court erred in finding that when the foremen told the employees that work would start at 6:45 o'clock they likewise mentioned the hour of 6:31, and that

if 7:00 o'clock was the starting time then 6:46 would also be designated in some manner. This finding is not supported by the testimony.

13. The District Court erred in finding that the defendant through its foremen had sought to circumvent the Fair Labor Standards Act, this finding being entirely unsupported by the evidence.

14. The District Court erred in finding that the defendant intended that its "51-52-53" plan should furnish employees a gift equal to or in lieu of a vacation, this finding being in conflict with uncontradicted testimony.

15. The District Court erred in finding that by nine minutes before starting time, 75 per cent of the shift had registered for work. The three exhibits on which the Court relied in so finding referred only to a particular group of employees, and showed as to them that less than 60 per cent of the employees had punched in by nine minutes to seven.

16. The District Court erred in finding that by eight minutes to starting time only a few stragglers were left. The three exhibits on which the Court relied referred only to a particular group of employees, and showed as to them that 30 per cent of the employees there involved had punched in at eight minutes to starting time, or later; and the uncontradicted testimony confirms that many employees punched in subsequent to eight minutes before the starting time.

17. The District Court erred in finding that the time spent in making personal preparations for work (such as putting on overalls, gloves, finger tapes, etc.) wouldn't take more than one or one and a half minutes, such finding not being supported by the evidence.

18. The District Court erred in finding that it would not take more than two minutes to walk from the time clock to the farthest point in the plant. This finding is unsupported by the testimony and contrary to the physical facts.

19. The District Court erred in finding that five minutes was a sufficient space of time for all the employees to punch the time clock in the morning. This finding is contrary to the undisputed testimony.

20. The District Court erred in finding that the plaintiffs' claim to have begun production before the regular starting time. As pointed out in the report of the Master, plaintiffs' claim was that they were "at work" within the meaning of the Fair Labor Standards Act as soon as they punched the time clock, no matter what they did thereafter; and plaintiffs did not generally undertake to testify to the time when production started.

21. The District Court erred in finding that the employees started work more promptly when returning to work after lunch time than when reporting for work in the morning. There is absolutely no support in the record for this finding.

22. The District Court erred in refusing to adopt the proposed findings of fact and conclusions of law submitted by defendant and appellant.

23. The District Court erred in failing and refusing to find specifically that any time spent by employees before the regular starting time in so-called preliminary activities (referred to in the Master's report as including (a) personal preparations such as putting on overalls, greasing arms, etc., and (b) activity of a non-personal nature such as turning on switches, opening windows,

etc.) was counterbalanced by time lost on occasions when the employees started work after the regularly scheduled starting time or quit before the regularly scheduled stopping time, but were credited with having worked from the regular starting time to the regular stopping time. The District Court disregarded the uncontradicted testimony as to the practice of the plaintiffs in quitting work early, and the District Court's conclusion was erroneous in failing to take into account the admitted fact that plaintiffs frequently quit work early.

24. The District Court erred in failing and refusing to dismiss the case for the reason that there was no showing as to when any individual plaintiff started work on any day, and even if the testimony of the plaintiffs could be accepted it would be utterly impossible to form any reasonably accurate estimate of any amount of time worked by plaintiffs, or any of them, before starting time. On the contrary, any estimate that might be made on the basis of the evidence in this record would be purely conjectural and speculative.

25. The District Court erred in failing to dismiss plaintiffs' claim, despite the fact that the Court implicitly affirmed the finding of the Master that if in any instances production work commenced shortly prior to the regularly established starting time it was counterbalanced by occasions when it was started after the hours and by admitted occasions when it was stopped several minutes before quitting time.

26. The District Court erred in failing and refusing to find that approximately eight to ten minutes of the 14-minute period were required to permit the employees to punch through the time-clock, and usually more time was consumed in doing this; that not more than about twenty-five employees per shift punched in at fourteen minutes to the hour; that it took various employees from two to

seven minutes to reach their respective departments after punching in at the time clock, the plant covering more than eight acres.

27. The District Court erred in allowing recovery to plaintiffs under the formula set forth in the Court's opinion, despite the fact that it was uncontradicted and repeatedly emphasized in the Master's report that the punch-in time (i.e., the interval between the moment the time clock was punched and the time work was to begin) of employees on jobs where it was physically impossible to start work before the regular starting time is approximately the same as that of plaintiffs who claim they sometimes started work before the regular starting time.

28. The District Court erred in refusing to dismiss plaintiffs' case despite the admitted fact that although there are and were approximately twelve departments in the plant of The Mt. Clemens Pottery Company, yet the testimony taken at the trial on behalf of the plaintiffs related solely to four departments, viz: Clay Shop, Brushing and Dipping Department, Glost Belt, Decorating Department; and there is no testimony by any of plaintiffs' witnesses referable to any possible claims of any employees other than the eight employees or former employees who testified.

29. The District Court erred in refusing to dismiss the case and in allowing recovery to plaintiffs on the basis of the arbitrary formula set forth in the Court's opinion, despite the fact that no error was shown in (nor did the Court disaffirm) the findings of the Master, to the effect that in the Clay Shop some of the employees worked on the so-called automatic jiggering machines; and these employees could not start work until the machine was started at the regular starting time; and that other Clay Shop employees worked in groups of three, and their work could not begin until the entire group of three were

present. It was usually after the regular starting time before the majority of the Clay Shop employees were at work. If some employees started work a minute or so before the starting time on certain mornings, they started after the regular time or quit work early on at least as many other days. None of the employees in the Clay Shop worked longer hours than are shown on the records of the company as hours worked.

30. The District Court erred in refusing to dismiss the case and in allowing recovery to plaintiffs on the basis of the arbitrary formula set forth in the Court's opinion, despite the fact that no error was shown in (nor did the Court disaffirm) the findings of the Master, to the effect that in the Brushing and Dipping Department, as in the Clay Shop, some of the employees worked in groups of three, and no individual in such a group could begin work until the entire group was fully assembled prior to the regular starting time on any day. Other employees worked on machines which were not turned on until the regular starting time. The clear preponderance of the credible evidence is that work did not begin until the regular starting time or shortly thereafter. None of the employees in this department worked longer hours than are shown on the records of the company as hours worked.

31. The District Court erred in refusing to dismiss the case and in allowing recovery to plaintiffs on the basis of the arbitrary formula set forth in the Court's opinion, despite the fact that no error was shown in (nor did the Court disaffirm) the findings of the Master, to the effect that in the Decorating Department no employees testified that they began work before the regular starting time. The testimony is uncontradicted that employees in this department did not work longer hours than are shown on the records of the company as hours worked.

32. The District Court erred in refusing to dismiss the case and in allowing recovery to plaintiffs on the basis of

the arbitrary formula set forth in the Court's opinion, despite the fact that no error was shown in (nor did the Court disaffirm) the findings of the Master, to the effect that in the Glost Belt Department work could not begin until the belt was turned on; and it could not be operated until practically a full crew was there. The belt was regularly started for production purposes at 7:00 A. M. None of the employees in this department worked longer hours than are indicated by the records of the company as hours worked.

33. The District Court erred in failing and refusing to find that in no department did work start before the regular starting time, even though a few employees had punched in fourteen minutes earlier; and that it was usually after the regular starting time before work actually started.

34. The District Court erred in failing and refusing to dismiss plaintiffs' case on the grounds that even if plaintiffs or any of them did work any amount of time prior to the regular starting time, still any such extra work at the beginning of the day was counterbalanced by the circumstance that in all departments employees frequently took rest periods of their own volition and to suit their own convenience during the day. On the average, employees spent twenty to thirty minutes daily in this manner. During these rest periods of "time out" no work was done, but the time so spent was included by the company as hours worked.

35. The District Court erred in failing and refusing to dismiss plaintiffs' case by reason of the fact that even if plaintiffs or any of them did perform prior to the regular starting time the extra work credited to them under the formula adopted in the Court's opinion, nevertheless as specifically found by the Master (and the Master's finding in this respect was implicitly confirmed by the District Court) employees in all departments frequently

quit work from five to ten minutes before the regular quitting time and did not punch out until after the regular quitting time. The time so lost at the end of the day would have more than counterbalanced any extra time credited to the plaintiffs at the beginning of the day under the Court's formula.

36. The District Court erred in failing and refusing to rule that plaintiffs' acquiescence for many years in the method employed by defendant company in computing their hours of work (which method was fair, reasonable, and well understood by the employees, and which method was identical with that followed for many years by substantially all other plants in this section of the country) estops the plaintiffs from asserting that some other method of computing time should have been employed.

37. The District Court erred in failing and refusing to rule that as a matter of law such activities as are described at p. 25 of the Master's report as "preliminary work" do not constitute a part of the employee's hours of work within the meaning of the Fair Labor Standards Act.

38. The District Court erred in failing and refusing to rule that in construing the meaning of the phrase "hours worked," in an action under the Fair Labor Standards Act, the Court must rely on custom, agreement, and established usage, in such a situation as is here involved.

39. The District Court erred in failing and refusing to rule that "hours worked" include only such time as the employee is actually engaged in the performance of some service in furtherance of the interests of his employer, or is required by the employer to hold himself in readiness for work at an assigned work place, under circumstances in which the employee's time is not his own.

40. The District Court erred in failing and refusing to rule that employees have a right to agree that their hours of work should be computed on a basis which permits them to actually work a full forty hours per week at straight time.

41. The District Court erred in failing and refusing to rule that the only appropriate methods of computing overtime compensation for plaintiffs in accordance with the statutory formula are—(1) payment for overtime at once and one-half their guaranteed regular rate of 30 cents per hour, or (2) payment at once and one-half the regular piece rates for such number of pieces as may be produced during overtime hours.

42. The District Court erred in failing and refusing to hold that in order to have recovered, plaintiffs would have had to prove not only that they worked overtime, but also that the employer suffered or permitted it, and there is no proof of this.

43. The District Court erred in failing and refusing to find that the institution and prosecution of this suit was not conducted in good faith and, on the contrary, constituted an abuse of the Court's process.

44. The District Court erred in ruling that plaintiff Union had the legal capacity under the statutes in such case made and provided, to act as the agent or representative of the employees for the purpose of prosecuting an action under Section 16(b) of the Fair Labor Standards Act.

45. The District Court erred in failing and refusing to find that as a matter of fact plaintiff Union was not properly authorized by its members to prosecute this action on behalf of any employees.

46. The District Court erred in ruling that the allegations in the complaint contained properly set forth the facts required to establish the jurisdiction of the Court.

47. The District Court erred in failing and refusing to confirm the finding of the Master (in which no error was shown) that production work did not regularly commence until the established starting time, and that if in some instances it was commenced shortly prior thereto it was counterbalanced by occasions when it was started after the hour and by admitted occasions when it was stopped several minutes before quitting time.

48. The District Court erred in failing and refusing to dismiss plaintiffs' case by reason of the finding of the Master (which was not challenged and which was not disaffirmed by the Court) that on this record neither the amount of time taken up by preliminary activities within the plant nor the proportion of it spent in advance of the established starting time can be computed for any given employee with any degree of reliability.

49. The District Court erred in adopting a formula for measuring recovery which granted a maximum recovery of eighty minutes extra time during a work week, whereas as found by the Master (and this finding was not disaffirmed nor challenged) under the most liberal estimates of the plaintiffs the extra time worked, if any, could not have aggregated more than thirty minutes per week.

50. The District Court erred in failing and refusing to give any effect to the long established custom and agreement as to computing hours of work.

51. The District Court erred in allowing recovery for certain periods of time even though there was no showing that the plaintiffs were engaged in rendering services during such times.

52. The District Court erred in failing and refusing to hold that there was no testimony as to the amount of extra time, if any, worked by the plaintiffs.

53. The District Court erred in failing and refusing to find that the claims of plaintiffs must be dismissed because such claims as to hours worked were based purely on conjecture and speculation and did not rise to the dignity of evidence nor attain the degree of reasonable certainty required as a basis for any recovery.

54. The District Court erred in failing and refusing to dismiss plaintiffs' case on the grounds that all employees did receive at least once and one-half their regular rate for all overtime worked by them.

55. The District Court erred in failing and refusing to rule that the Fair Labor Standards Act is inapplicable to pieceworkers.

56, It was error for the District Court to reverse the conclusion of the Master without making a detailed finding as to the precise points as to which the Master's specific findings of fact were overruled. The District Court's findings of fact and conclusions of law are stated in vague and most general terms and fail to make clear on what points the Court refuses to accept the Master's findings of fact. The Court's conclusions are inconsistent with many unchallenged findings of the Master which, under the Court's order, stand confirmed.

57. The award of the sum of $2,000.00 as attorneys' fee to plaintiffs' attorney was erroneous, the same being excessive in view of the amount of recovery allowed to plaintiffs, and in view of the fact that the award represented compensation for time spent in connection with claims which were utterly without foundation in fact and which were abandoned by the plaintiffs in the course of the trial, and in view of the fact that the allowance was

made without any testimony to support it and without a hearing.

58. The District Court erred in awarding any fees to plaintiffs' attorney, plaintiffs not having been entitled to recover anything in this suit.

59. The District Court erred in denying the motion to strike filed by defendant and appellant on or about May 12, 1941, and its motion to strike or for further particulars filed on or about November 1, 1941, and its motion to strike or for further particulars filed on or about December 6, 1941.

60. The District Court erred in denying the motion of defendant and appellant to dismiss the complaint for the reason that it failed to state a claim on which relief might be granted.

61. The District Court erred in failing to render judgment against the plaintiffs and assessing costs against the plaintiffs individually and collectively.

Frank E. Cooper,
One of Attorneys for Defendant.
Albert E. Meder,
Frank E. Cooper,
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Detroit 26, Michigan.
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Mt. Clemens, Michigan.
Beaumont, Smith & Harris,
Of Counsel,
Attorneys for Defendant-Appellant.

September 8, 1944.

## AFFIDAVIT OF SERVICE

(Filed Sept. 12, 1944)

State of Michigan,
County of Wayne—ss.

MARILYN SULLIVAN, of Lincoln Park, Wayne County, Michigan, being first duly sworn, deposes and says that she is employed by Beaumont, Smith & Harris, attorneys at law, and that on the 8th day of September, 1944, she personally served upon Messrs. Edward Lamb and Lowell Goerlich, attorneys for the plaintiffs in the above entitled cause, true copies of the following documents:

A. Notice of Appeal to Circuit Court of Appeals under Rule 73.

B. Designation of record on appeal by defendant-appellant designating the portions of the record, proceedings, evidence, pleadings, orders and exhibits to be contained in the record on appeal.

C. Concise statement of points on which defendant-appellant Mt. Clemens Pottery Company intends to rely.

D. Order dispensing with reproduction of exhibits in printed record,

the originals of said documents being on file in the above entitled cause, and that such service was made by enclosing the said copies in an envelope addressed to Messrs. Edward Lamb and Lowell Goerlich, attorneys at law, 1014 Edison Building, Toledo, Ohio, which envelope being first duly sealed and with proper United States postage pre-

paid was deposited by deponent with the postal authorities in the United States post office in the Penobscot Building, Detroit, Michigan, for mailing as registered mail, return receipt requested, and that attached hereto is the return receipt evidencing delivery of the said copies to the addressees.

Marilyn Sullivan.

Subscribed and sworn to before me this 11th day of September, 1944.

Helen Hogan,
Notary Public, Wayne County, Michigan.
My commission expires October 11, 1946.

## TRANSCRIPT OF TESTIMONY

### HEARING ON MOTION FOR JUDGMENT BY DEFAULT AND MOTION FOR PARTICULARS, DEC. 15, 1941

Mr. Lamb: We have a motion, your Honor, for judgment under Rule 37 for the failure, because of the failure of the defendants to answer interrogatories that were served on the defendants in April, eight months ago.

The Court: Well, you have been going in and getting information. Don't think the Court is seriously going to do that. I am not going to do it, so you need not argue about it at all.

Mr. Lamb: We, also, in that same motion, have an application, a motion for the appointment of a Special Master.

We have diligently and aggressively examined the records. Every time we filed a motion, or made some attempt to get this information, there are more dilatory motions. The thing has been going on month after month, and we believe the time of the Court, and everyone else would be saved, if the Court, as he suggested last week—your Honor suggested when we were here that unless this information were secured, you were going to send someone over there yourself and obtain it.

The Court: Is this the place that is having the trouble out there right now?

Mr. Lamb: Yes.

The Court: I read in the paper about this strike. Are they working right now?

Mr. Lamb: There are about 500 of them that are not.

The Court: How many are in this plant? One thousand?

Mr. Lamb: One thousand to 1200. We represent 260.

The Court: Have you got all of the information you claim you are entitled to?

Mr. Lamb: We not only have it, your Honor, but we have attached it to a bill of particulars, an amended bill of particulars, to set forth everything your Honor has asked for, and all that we ask for now, is that they answer these interrogatories on file, and answer so that we can proceed to trial.

And, secondly, we believe that all of this would be expedited a great deal if the Court would appoint some person to determine the facts in the case. Also, to determine the amount, if any, that these plaintiffs, these named plaintiffs, are entitled to.

We have several cases. I don't know whether your Honor remembers the issues in this thing, but this company gyps each employee out of approximately 56 minutes of pay a day.

The Court: A day?

Mr. Lamb: A day. Almost $1,000 a day they are taking out of the payroll of these employees. They do it in a very simple way, and we set it forth in our bill of particulars.

There are several ways they do it, but the primary thing that is the essence of this suit is that an employee will report and go to work at 6:46 in the morning. The company will pay them from 7 o'clock. They will report out at lunch at 12:15; the company will only pay them to 12 o'clock. They report back from lunch at 12:46, and the company will only pay them from one o'clock, and so forth, four times a day, for every single employee in there.

We have set forth all of that information in our bill of particulars, and the amendment to the bill of particulars, as well as the other things which the company is doing, which gives us the claim under the Fair Labor Standards Act of 1936.

This company even deducts from the employees' wages the cost of carriages that haul pottery back and forth between departments. They deduct maintenance charges, and all these things that are unauthorized in proper deductions. The thing is they take 56 minutes a day from every employee down there.

The general attorney of the Wages and Hours Division of the United States is here. I don't think there is any argument about the necessity of a company paying an employee for the time worked on its premises. * * *

The whole essence of this thing grows out of this cheating of the company, taking from the time cards of these employees 56 minutes every single day in the year.

The Court: All right. What has the company got to say on that? First, what are the interrogatories that you insist be answered? * * *

Mr. Cooper: May I say, first, your Honor, that this is not the court in which to try out the strike issues. Mr. Lamb has made a number of statements on the record—

The Court: (Interposing) What is your position about this?

Mr. Cooper: Interrogatories?

The Court: As I understand it, these men come in 14 minutes to 7, and they punch the clock at that time, and then they don't go to work until,—or, they go to work right away.

Mr. Lamb: They go to work immediately.

The Court: But, they get paid from 7 to 12. Now, does the company deny that?

Mr. Cooper: We do, your Honor, most emphatically.

The Court: Then why isn't it a question of fact to find out on that?

Mr. Cooper: That is exactly a question of fact that will be presented on the trial.

The Court: You made a motion the other day. I am getting sick and tired of you people playing with the Court. I will tell you what I am going to do again; I have been here long enough to know that neither side is entirely without fault. That is, perhaps the one side

aggravates, and, perhaps one is more at fault with the other, but isn't that the only issue? And, why shouldn't I refer this to a Master and let him get going and get the information, and then I will decide the question of law involved. Isn't that the only thing? . . .

The Court: All right, gentlemen. Start your second point over again. As to the first point, I think there is no more that need be said about that.

Mr. Cooper: Yes, your Honor. May I make one suggestion before stating the second point, your Honor?

The Court: All right.

Mr. Cooper: Let us assume one of the plaintiffs, you can pick anyone, is a young fellow; he lives about ten miles out of town; he drives in to work every morning in an old 1934 Ford, with four or five other people that live in the same part of the country, and work with him; and they leave home pretty early, and work is supposed to start at 7 o'clock. Sometimes they start work late, but sometimes they get into Mount Clemens a little bit before seven. That situation was such that long ago, and long before they had this suit, in order to prevent the people from getting in too early to Mount Clemens, they were going to prevent people from getting in early and punching their time clock. They punched the time clock before a quarter to seven. The result is you find these people walking in there punching the clock four or five minutes to seven; sometimes even after seven; no one before 14 minutes to seven, because the doors aren't open before that.

They don't go over and begin work as soon as they punch their time clock; they go to their locker, and take off their street clothes, and put on their working clothes, and work starts at seven o'clock.

That is going to be our answer, and our view of the testimony here. . . .

The Court: How many of these time clocks have you got?

Mr. Cooper: I can't say that offhand. I have seen three or four.

The Court: Let us say they have four. That is about 300 employees.

Mr. Lamb: 1200.

The Court: To each time clock. Four of them would be 300 to a time clock. How long would it take those people to punch a clock? . . .

Mr. Cooper: I would say about 50 can punch in on one time clock in about a minute.

The Court: So that five minutes, so far as the punching is concerned, would be enough to let them get in there and go to their place; isn't that true?

Mr. Cooper: If it were a question—I don't know the fact, your Honor. I think I better answer that factually.

The Court: That is a question right there of common sense. Five minutes for punching the clock. Now, mind you, I am not talking about changing their clothes, or anything else. . . .

The Court: All right. Now, they quit at 12 o'clock—they quit at 12:14, but they claim that your clocks show them to be quitting at 12 o'clock when, as a matter of fact, they quit at 12:14.

Now, the same reason about coming in an automobile, and picking other people up, and getting there early, can't apply. What is the reason advanced by the company for that? Or, do you deny that that takes place?

Mr. Cooper: We deny that that takes place, your Honor. . . .

The original complaint, as stated in the language approximately that your Honor has just used, as I understand it, it is actually 12:14 when Mr. Jones comes out here and punches out his time clock, and that by some manipulation the clock stamps 12 on the card, although it is actually 12:14. Is that your Honor's understanding?

The Court: I don't know what they claim. What do you claim, that the clock automatically at 12:14 registers 12 o'clock? Or, that the clock registers properly, but that when they compute the time, they nick them off 14 minutes?

Mr. Lamb: That is right. We claim two things; first,

that they nick them off—the time clock is accurately stamped, the time is stamped on the time card as 12:14; they only pay them, as will be shown in many, many cases in our bill of particulars, and it is true in every case of every employee of The Mount Clemens Pottery Company, they only pay them for 12 o'clock. . . .

Mr. Cooper: In that connection, may I say this, your Honor; I understand now, as I understood November 10th, that the particular paragraph in the original complaint which your Honor and counsel for the plaintiff have just been discussing, which puts it in the phraseology of the time clock punching the wrong time, is now put to one side.

The Court: It is eliminated. If it is in there that the clock punches the wrong time, as I understand it, they don't claim that. I certainly am not going to start fixing the clocks. You can make that a question of evidence, if you want to.

You admit the clock punches the right time.

Mr. Lamb: That is right.

The Court: But, they compute it the wrong way.

Mr. Lamb: Yes, sir, your Honor.

The Court: All right.

Mr. Cooper: I think I may now just state without any elaboration, your Honor, in view of the colloquy, the second point I raised in my motion for particulars.

The Court: All right.

Mr. Cooper: It is said that all of the employees represented in this action worked longer hours than are shown on the time cards. It is conceded, though, now, as I think it would appear on an examination of the cards, that the cards punch the actual moment that the man sticks his card into the clock.

The Court: I guess there is no doubt of that. I mean, they don't dispute that. . . .

Mr. Cooper: That claim I well understand. This second point, your Honor, is that the amended bill of particulars states that all the claimants worked longer hours than are shown on the clock cards.

The Court: Do they say on the clock cards or on the computation?

Mr. Cooper: On the time cards.

Mr. Lamb: We have said time cards and computation. The reason for that is this, your Honor, when we asked for more particulars we first filed a bill of particulars, and in our amended bill of particulars we set forth many cards showing this exact method of computation. We also show eight different grounds of just how this computation is arrived at, that there have been erroneous keeping of the cards.

Item "F" of our amended bill of particulars outlines, for instance, how the foreman took time cards at 12:29—the foreman did this; the men swore they did not do that—the foreman took the time cards and went out and punched them at 12:29, and punched them back at 12:31 gypping the men out of a half-hour's work right there, because they only pay for the preceding quarter of an hour. They gypped them out of that quarter of an hour, and the men didn't leave the plant.

The Court: That becomes a question of fact, does it not?

Mr. Lamb: That is right, but that shows how a time card, our time cards, have not been accurately kept.

The Court: All right.

Mr. Cooper: Now, as to my second point, your Honor, I want to know whether it is now stated on the record that this statement in the amendment to the Bill of Particulars that all the employees represented worked—they claim they worked longer hours than are shown on the time cards, does not mean what to me it seems to mean; whether it does not mean that if he punched in at 9:51, or 7:10, as this next one did, that they actually started before that.

The Court: Do you stick to that, that all these men worked longer hours than the time cards show?

Mr. Lamb: We are in this position, your Honor. They asked for full information; how we arrive at this claim and so forth. In the amendment to the Bill of Particu-

lars we did outline the various ways as clearly and as positively as we humanly could.

The Court: That has nothing to do with it. Here the time cards show 9 hours and 21 minutes, but they only credit the men with 8 hours and 45 minutes.

Mr. Lamb: Yes.

The Court: That is one classification.

Mr. Lamb: Yes.

The Court: And that becomes a question of fact.

Mr. Lamb: That is right.

The Court: And then a question of law, perhaps, on whether they are justified in having them come in earlier in the morning so that they can get ready.

Mr. Lamb: Yes.

The Court: I can understand that. I can understand the morning. Now, do you also claim that some of the men, for example, worked 9 hours and were only—the time card only shows 8 hours and 30 minutes.

Mr. Lamb: Yes.

The Court: That applies to all of them?

Mr. Lamb: Well, we can't say, your Honor. I have examined the time cards— . . .

The Court: Just give that. Now, that is—

Mr. Lamb (Interposing): List of persons?

The Court: More hours worked than shown on card. If you claim that for everybody—you ought to have some of them who claim that, I am sure. They must have a fine bunch of foremen out there.

Mr. Lamb: They do have a fine bunch of foremen out there.

The Court: I will have to be shown that. I can't believe a man, who is a working man and works himself, would so far forget himself as to do a thing like that.

Mr. Lamb: Your Honor, I challenge anyone to show a company that does this same thing. There is no other company in the United States that we have been able to find that gyps their employees like this one does.

The Court: All right. When a foreman takes a man's

card out, and lets him work a half-hour, this Court is going to do a little punching of its own, if that is true. I don't know. I can't believe that. It might happen in one or two instances.

Mr. Lamb: It has happened in whole departments, your Honor. I have the departments and when those things occurred in the bill of particulars.

The Court: It is up to you to prove it. That is a matter of proof.

What is the third one?

Mr. Cooper: Your Honor, I presume it is unnecessary for me to prevent undue suspicion being created against my client—

The Court (Interposing): Listen, I have been here before. In other words, I am not to believe everything he says. That is right, isn't it? I am not to believe everything he says about your client?

Mr. Cooper: I would prefer that your Honor did not until my side is heard.

The Court: Well, I won't. All right, what is the next one.

Mr. Cooper: The third one fits into a very similar category; they are particular claims which, by the way, are advanced for the first time in the amendment to the Bill of Particulars. They claim that certain individuals performed what is called uncompensated tasks. Take a man making cups, say, I suppose at a piecework basis, and at the end of the day he cleans up the machinery, or cleans up the room, and we ask in the third place for particulars as to those two or three new classes of claims.

The Court: You want to know who he claims worked overtime or worked beyond any way of reckoning, for doing such kind of labor as is not compensated for?

Mr. Cooper: Yes, your Honor.

Mr. Lamb: We have set that forth in Item "I" of our bill of particulars.

The Court: That takes care of that.

Mr. Lamb: Yes.

The Court: What does it say?

(Mr. Lamb thereupon read Item F, above-referred to.)

Mr. Lamb: What we are doing, they have asked us how these things occurred, and we have stated the following are typical of what has occurred.

The Court: What else do you want besides that?

Mr. Lamb: We couldn't furnish that information. They have the record.

The Court: What else do you want from them on that?

Mr. Cooper: The list of individuals as to whom they claim that occurred.

The Court: I don't know. If that occurred in one case, and they prove it in one case, then I think I could find out in how many cases, because the danger of giving you the list of that, they may miss out on somebody, and those people wouldn't be taken care of, and this after all is a class suit, isn't it?

Mr. Lamb: Yes, your Honor.

The Court: I think they have told you about it. I am going to find out about this. If this company is doing that out there they ought to receive little consideration. On the other hand, if the Union is coming in here with a faked statement, they ought to take what is coming to them, too, and they will get it in this court if they are unable to substantiate these things.

Mr. Cooper: That leaves me only one remaining point, your Honor. It is a little more difficult to state. It comes down to about this. That the amendment to the bill of particulars, and, as I say, this simply appears to me not to particularize, but rather to further muddy the waters—it contains a number of things which simply mis-state, do not correctly state the records on which it is based.

Must for example, on page 9 of the amendment to the Bill of Particulars it alleges that a certain group of cards shows that they were all punched uniformly at a certain hour in the morning, and punched out at a certain hour

at noon, and I have them along. They certainly show almost as complete a difference as one could imagine; different hours, different days and different employees.

The Court: Do they enumerate what employees they are that did that?

Mr. Cooper: Not by names, your Honor. It says by clock cards. As to the clock cards, it says numbers 941 through 956.

The Court: I see. And that does show they were punched in at different times.

Mr. Cooper: Yes, your Honor.

The Court: Is it possible on those clocks to punch, oh, 10, 50 or 100 at one time?

Mr. Cooper: No, your Honor. There is only one little slot for one at a time.

The Court: As I understand, you stand in line and punch one at a time.

Mr. Cooper: Precisely.

The Court: What do they claim for that? Supposing that is true, what do they claim for it in their bill?

Mr. Cooper: Their bill doesn't make that clear.

The Court: What do you claim for that?

Mr. Lamb: On the basis men were not paid, that the cards are not an accurate computation of the time.

The Court: That all goes to one, two, or three.

Mr. Lamb: It is all a question of proof.

The Court: I mean, here are three things, as I understand it, that you are going to try to prove; first, that they are getting paid for less time than the cards themselves show they are entitled to.

Mr. Lamb: Yes, your Honor.

The Court: Now there you said you have given them all the information you can on that. That becomes a question of fact, and later on may become a question of law if you are right on that.

Second, that some of the cards do not show the exact number of hours worked; that more hours were worked than is shown on the cards themselves.

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to God we could get them back.
s what the other fellow says, too.
nned to either side.
t like these men out on the street
they don't want to be out.
few of them are.
could get the management to sit

ing): I can see both sides of it up
sn't essential employment, is it?
n't make national defense stuff.
houldn't have any strikes in this
for defense work or not, and I am
Get your answer in.
e have a time fixed so that there
standing?
ve to receive this additional list of
ertain claim?
n put it on the record now. I don't
reporter over. I suppose you did.
r.
rought the reporter?
you Honor.



The Court: You can put on there that the Court has ordered the plaintiff on the second point—no, in answer to the second point, the plaintiff says that the persons that he has reference to are all those who are named plaintiffs. Is that right?

Mr. Lamb: Yes, your Honor.

The Court: No more, no less. If anybody else wants to get in on it, that is his business. That settles that.

Mr. Cooper: Do I understand that correctly, your Honor, that every person named as plaintiffs claims he worked longer hours than would be computed on the basis or on the clock-card system?

The Court: That is what he says. I don't think they can prove that, but in order to make sure that is what he is saying, and that is what I would do if I were in his shoes, and that is what you would do if you were doing the same thing.

Mr. Cooper: Well, we are not to have any statement at all as to how much extra time they claimed?

The Court: You can get that on the proof. How can they tell? You can't pin them down to something where all the facts are entirely within your possession.

I am looking not so much as to whether they show the right person, or right hour, or this, and that, or the other thing; I am looking at justice. What did they do? If this company did wrong, they should pay for it. If they didn't, this bunch of workmen that are bringing this action, they should pay for it.

I am not going to dilly dally here to find out if they have the right proof in. That is a matter of proof. It may be varied as it comes into court. There is no reason, gentlemen, why you cannot get that information. . . .

The Court (Interposing): Here is the claim, as I understand it. There may be variances of this, but this is a typical case.

A man went to work at one o'clock in the afternoon, for example, and they gave his card, or his card was taken up by his foreman, or somebody else, and at one-thirty

they went out and punched his clock, and instead of showing that he went to work at one o'clock it appears that he went to work at one-thirty. Isn't that what you claim?

Mr. Lamb: That is right.

The Court: There isn't any question in my mind what they are claiming. I don't say they can prove it, but I mean what they are claiming; is that plain?

Mr. Cooper: Extremely plain as to a specific case. As I understand the claim, your Honor, though, they don't claim that that would be the way in which any extra time might have occurred in each case. On a claim as broad as that it is obvious that anything at all can be proved, and in order that we may proper prepare for trial and know just what the issues are, I think we should have a—

The Court (Interposing): I don't think that is true. You aren't going to fool the court. Here is what they claim you did. If you did not do it, you won't be in any trouble at all. If you did do it, it is a question of fact.

The Court: I think he stated it as particularly as he possibly can under the circumstances. It is more particular than when he came in here. There isn't any doubt about that.

Mr. Cooper: That is true.

The Court: Now, you know what he claims, and he has given you the names of the fellows to whom it relates. What else can you want? What else can you sensibly want?

Of course, if you want to say, "I don't understand it yet," regardless of whether you should understand it or not, why, I just can't help that, except that I can rule.

Now, I give you ten days in which to get in that answer. If you haven't got your answer in in ten days, and these people want to take a default, I am going to let them take a default, but this case is going to move. It is going to move, now, I will tell you. . . .

The Court: Now, gentlemen, I have seen too much. Sometimes it is the Union that comes in and they file a lot of technical things, and other times it is the company.

I don't know who is right here. I don't know who is right here and, perhaps, this whole thing will clear up when you get in court and find out it is a mistake.

I can see how that first fourteen minutes or so could be accounted for. I can understand that, or a good share of that first fourteen minutes. But, I certainly can't understand how the time clock shows that they quit at 4:14, and they only get paid up to 4 o'clock. I can't see that. Could you, if that is true? . . .

## ARGUMENTS ON MOTION OF PLAINTIFFS FOR SUMMARY JUDGMENT, JAN. 26, 1942.

Mr. Lamb: If your Honor please, in accordance with an order entered by your Honor in December, the defendant Mt. Clemens Pottery Company was required to and did file an answer on January 5th. In this answer the company admits that it does not pay employees for the time as shown on the time clock cards kept by the company in accordance with the Wage and Hour Act itself.

We have filed a motion for summary judgment on the simple proposition that there is no bona fide issue of fact, but the simple question of law presented as to whether or not this defendant is required to pay the employees in accordance with the time records which the companies are required to keep under the Wage and Hour Act.

The Court: Specifically, what does that time amount to?

Mr. Lamb: It amounts to considerable.

The Court: I don't mean in dollars and cents, but in hours.

Mr. Lamb: 56 minutes every day for each employee.

The Court: Give me that over again how you figured that out.

Mr. Lamb: The employees report at 6:46 A. M. They are required to do that. If they should report five minutes after 6:46, they are sent home.

The Court: Is that admitted. Do they admit that?

Mr. Cooper: No, sir.

Mr. Lamb: No, I wouldn't say the admission is about their sending them home. I have witnesses here who will prove that. They do admit that they do not pay from 6:46 A. M., as shown on the time clock card, but they only pay from 7 A. M.

The Court: How long does it take them to all check in on the time clock?

Mr. Lamb: The time varies a minute or two, but from the time when the time clock is punched to the time that they actually work is infinitesimal, possibly a minute. We have affidavits and witnesses here, incidentally, to back up the affidavits.

The Court: Now, suppose I am to start at 11 o'clock.

Mr. Lamb: Yes.

The Court: How many employees do they have?

Mr. Lamb: About a thousand.

The Court: How many time clocks?

Mr. Lamb: Well, we contend that there are around four, but they claim that there have been more.

The Court: Who is "they"?

Mr. Lamb: That is, the defendants.

The Court: Suppose we say four. Suppose they line them up at four different time clocks.

Mr. Lamb: Yes.

The Court: How long would that take them to check them in?

Mr. Lamb: About a minute or two. They check in by departments. You see, irrespective whether they are checked in at 6:46, 6:47, or 6:48—

The Court: I am looking at it from a different viewpoint. At least, they are supposed to start at 7 o'clock?

Mr. Lamb: No, they are supposed to start at 6:46.

The Court: You can't start the minute you get there.

Mr. Lamb: They start a minute after.

The Court: If it is one-sixtieth of a minute, the principle is the same.

Mr. Lamb: That is right.

The Court: What time are they supposed to start work?

Mr. Lamb: They start work immediately on the time that they punch the time clocks.

The Court: All right, I will start over again. What time are they supposed to start work?

Mr. Lamb: 6:46.

The Court: Well, didn't you tell me the other day that they were supposed to start work at 7 o'clock?

Mr. Lamb: No.

The Court: But they got there at 6:46?

Mr. Lamb: They start to work immediately upon arrival at the plant, your Honor.

The Court: Now, suppose I got in there at 6:46 and punched the clock.

Mr. Lamb: That is right.

The Court: And I sat around, walked over to my machine and sat down; put on overalls, which took me, let's say, five minutes. Well, let's say the whole thing took me four minutes, so I am at the machine, then, ten minutes to 7. And say that everybody is right; they start at 7 o'clock. Suppose a fellow did that. Would he be fired for not working during that time?

Mr. Lamb: Yes, sir. We have people in the courtroom who have been sent home for that very reason.

The Court: That is just what I want to know.

Mr. Lamb: Yes, sir.

The Court: I recognize this. If I was running a factory and they started at 7 o'clock, I would expect them to get there a little ahead of time.

Mr. Lamb: These people are on piece-work, your Honor, so that when they come to their bench, they not only have the personal incentive to turn out production, but they also have their foreman, for instance Harms, who signs an affidavit that if they don't start to work—

where there are one thousand employees, your Honor, we know they are not going to allow anyone to sit around.

But here they report at 6:46, and it may take them a minute, they mix their glosses and they start in production, and they are paid by piecework.

Now, the Wages and Hour Law and the decisions are uniform in holding that the records must be kept, showing the time record. Now, the answer of the defendant says, well, even though they report it there, most of these people were on piecework so it doesn't make any substantial difference.

But this is where it makes a substantial difference. When these people report at 6:46 and go into production, the Wage and Hour Law, of course, requires them to be paid for their production and the time that they spend, and whether it is on piecework or straight time or any other method of computation, they must be paid time and a half after their forty hours of work, or their piecework plus bonus plus straight time.

The Court: How much does it amount to?

Mr. Lamb: 56 minutes a day.

The Court: There is 14 minutes right there.

Mr. Lamb: Then they will work until 12:14.

The Court: They will actually work from 7 until 12:14?

Mr. Lamb: 6:46 until 12:14.

The Court: I am talking about the time clock. To 12:14?

Mr. Lamb: Yes, sir.

The Court: What do they get credit for.

Mr. Lamb: 12 o'clock.

The Court: There is 14 minutes more there.

Mr. Lamb: That is right. Then they come back at 12:46.

The Court: 12:46.

Mr. Lamb: From lunch. And they are paid from 1 o'clock.

The Court: Then what?

Mr. Lamb: The company pays them only from 1 o'clock.

The Court: That is 14 minutes more. All right.

Mr. Lamb: Then they will work until 4:14 and they will be paid only until 4 o'clock.

The Court: On that, you claim you are entitled to a summary judgment?

Mr. Lamb: Because they admit they are not paying them on the time clock records, and Judge Raymond has decided where an employee is in or about the premises, subject to employers' directions, he must be paid. We have cited other cases in our brief. For instance, the Sunshine Mining case, where the rule is from portal to portal, the employee must be paid the time spent from portal to portal.

The Court: What is your position on that, gentlemen?

Mr. Cooper: Your Honor, I would like to make two points, first with reference to Mr. Lamb's discussion.

His motion, as I understand it, is based on the proposition that the court may rule as a matter of law that the man is at work from the moment he punches a time clock, and continues at work until the minute he punches the time clock out. I think that the question as to whether or not an employee does begin working when he punches the time clock is in every case a question of fact.

The Court: Do you claim it takes them fourteen minutes after he punches the time clock, to get started at work?

Mr. Cooper: I don't claim that it would require 14 minutes, your Honor. I claim, though, that an occasional employee who punches in 14 minutes to 7—and let me remind your Honor, as indicated by the bills of particulars, there are very few employees who will punch in at 14 minutes to 7.

The Court: Suppose 13 minutes. Let's look at it in a practical way. I worked in a factory, so I know. I know how much time it takes you to get to these places. Of course, I don't know this particular factory, except I

have been reading in the paper about a lot of trouble out there.

But here is 14 minutes. A fellow gets there at 6:46. You say he starts at 7. Now, he quits at 12:14, and they only pay him from 7 to 12. What possible excuse can there be for this company doing that, under any law? I can take judicial notice of the fact that it doesn't take 14 minutes to leave that place. Then, besides, he actually works until 12:14, doesn't he?

Mr. Cooper: No. He doesn't your Honor. That is precisely the point.

The Court: Well, let's get at that. Here is a question of fact coming up. Does he actually work until 12:14?

Mr. Lamb: Of course. We have the affidavits from the people themselves.

The Court: Do they admit that in their pleadings?

Mr. Lamb: They only pay them to 12; and they work until 12:14.

The Court: But they say they only work until 12.

Mr. Lamb: They work until 12:14.

The Court: That presents a question of fact. You told me they admitted that. They deny he works until 12:14.

Mr. Lamb: They do admit it, your Honor. They admit they haven't paid them according to the time clock records.

The Court: Let's see what they say on that, because if that is supported, there is only a question of law and the amount to be figured up.

If this were two or three minutes getting to and from work, I would say the workers were going out of their way looking for trouble, or looking for extra money. But to say that it takes a man 14 minutes to get to his work and 14 minutes back, 56 minutes a day, that certainly is an attempt to circumvent the law, if that is true.

Mr. Lamb: Your Honor, may I point out that there are even cases where the company has followed this policy of checking a man out at 12:29 and checking his clock, punching it—

The Court (Interposing): Give me that where they haven't paid according to the time.

Mr. Lamb: Page 7 of their answer, they state:

> "This defendant further shows that where an employee punches the time clock before starting work or after quitting work, this defendant does not compensate such employee for periods he was in the plant but not working prior to the start of work or subsequent to the close of work."

The Court: Give me that again, "but not working."

Mr. Lamb (Reading):

> "—does not compensate such employee for periods he was in the plant but not working prior to the start of work or subsequent to the close of work."

The Court: "In the plant but not working." Read that again.

Mr. Lamb (Reading):

> "This defendant further shows that where an employee punches the time clock before starting work or after quitting work, this defendant does not compensate such employee for periods he was in the plant but not working prior to the start of work or subsequent to the close of work."

It is a simple question of whether or not he must pay while he is on the company's premises in the company's employment, according to the records which the company keeps.

The Court: You say it has been determined they have got to keep a record of the time he works?

Mr. Lamb: That is right.

The Court: And they haven't done that here?

Mr. Lamb: We say they have. It is the only record they have got of the time he works. We have the affidavits to show the employees worked from that time shown by the time clock.

The Court: Have they got affidavits to the contrary?

Mr. Cooper: Yes, your Honor.

Mr. Lamb: How could they have an affidavit that this employee, Steve Anderson or Lillian Socia, who say they went directly to work and worked in accordance with the time clock cards of the company—

The Court (Interposing): That becomes a question of fact later on.

Mr. Lamb: They can't make a bona fide issue of fact when the records they kept themselves say they did work, and somebody says they didn't work.

The Court: That is a question of fact to be determined. I can't give you a summary judgment on that, even though I may know down in my heart that they did just exactly what you claim they did.

I can't understand this company out there. Some of these people have never cooperated at all with this Wages and Hours Law, and they haven't been able to see what is going on in this country.

But I don't say that they have done it here, except it shouldn't take 56 minutes for a man to get in and out of that place.

Mr. Lamb: It doesn't.

Mr. Nunneley: It doesn't. That isn't a fact. My brother has produced the maximum time.

Now, if the Court please—

The Court: Do you claim that these people don't have to get there at 14 minutes to 7?

Mr. Nunneley: Correct.

The Court: You claim they do not?

Mr. Nunneley: They do not.

The Court: And you claim they are paid only for the work that they actually do?

Mr. Nunneley: That is right. We pay for what they do. They have established starting times.

The Court: 7 o'clock.

Mr. Nunneley: 7 o'clock, let us say. There are various ones in various departments.

The Court: How about quitting at 12:14?

Mr. Nunneley: The quitting is exactly the same thing. They quit at 12 o'clock. They have that long to get out

of there. Maybe they hang around. Those cards will show not always 14 minutes. They show all kinds of times between 12 o'clock and 14 after.

And the same thing coming in in the morning. They are supposed to be ready to go to work at 7 o'clock. Some of those people live out twelve, fourteen miles.

They don't even open the gate until 14 minutes to 7 o'clock. Some of them come in at that time. Some other fellow comes at 10 minutes to 7, somebody comes at 7 o'clock. Those cards show all kinds of variations.

The Court: He says any time they come there five minutes late, they send them home.

Mr. Nunneley: We deny that.

The Court: I am going to deny the motion for summary judgment and refer this matter to take evidence immediately before a Master so that you can come back with everybody's case in detail.

And I am telling you this, if they have worked people ten or fifteen minutes more and didn't pay them, they will have to pay overtime. They aren't going to get around the law by any subterfuge. If they are, I don't say they are. But I can't, with a question of fact raised before me, I can't give a summary judgment.

They deny these things. Therefore it must be heard. I will refer the matter to a Master, and when can you gentlemen take it up with him?

## HEARINGS BEFORE SPECIAL MASTER, FEB. 9, 1942

* * *

Mr. Cooper: Before describing our position as set forth in our answer, and in answer to plaintiff's opening statement this morning, I would like to put on the record two or three motions.

First, a motion to dismiss the complaint, which is attached to our answer and noticed for the opening of the

hearing. It has not yet been before the court. That motion depends on three grounds.

First of all, that, in the language of the bill, it does not set forth a claim on which relief may be granted. More particularly, that the claim does not properly set forth that the employees represented or claimed to be represented in this action are subject to the provisions of the so-called Wage and Hour Law. • • •

The second ground of our motion to dismiss is that neither the complaint nor the bills of particulars so-called, which have been filed, set forth what violations of the act are claimed as to each plaintiff. We have, as appears I think sufficiently from the file, endeavored time and again to ascertain what is claimed as to each individual plaintiff, both in terms of the amount of money which he claims is due to him and the particular violations of the law which he claims have been committed with respect to him, and the weeks in which he claimed such violations occurred. • • •

The third ground of this first motion to dismiss the complaint will be our position that the provisions of 6 and 7 of the Act have no application to the employment of these plaintiffs. • • •

The second motion which I would like to make is to dismiss the complaint as a class action. We are moving that the complaint and this action be limited to the named individual plaintiffs and to such further individuals as may, in accordance with the method provided by the rules, make themselves parties by intervention. This motion, of course, was denied without prejudice, specifically without prejudice in Judge Picard's opinion of Jannary 13. There is already in the files a brief fully stating our position in the matter and citing the authorities on which we relied. I think a reference to that would be sufficient for our present purposes.

Essentially, it is our position in that regard that we do not have here a class action in which the same or similar claims are made on behalf of a large group of in-

dividuals, but that we have here—and this, I think, will develop as the evidence comes in—different claims of different natures as to different plaintiffs, and we really have some 250 or 260 separate little suits.

This second motion to dismiss the complaint as a class action is also, of course, based upon the proposition—authorities for this being likewise cited in the brief I mentioned—that while under Section 16-B of the Wage and Hour Law an individual may designate another individual as his representative for purposes of starting a class suit, they may not designate two agents, nor a corporate agent, nor a voluntary association as an agent.

In the third place among the motions I would like to renew is a motion to strike I made on May 26, likewise denied without prejudice, and to renew finally our subsequent motions for particulars. * * *

The Master: As to these motions, I don't think I want to hear elaborate reply to them. These motions are motions that, I presume, are made to protect the record. Most of them have been up before the Court before, and have been denied—at least denied without prejudice, and I will just make a general blanket denial of all of them, without—that is, the motion to dismiss the bill of complaint, and to strike, and for further particulars—dismiss them without prejudice to their renewal, and without having investigated the merits of them at all. In some of these it may be they have been denied by the Court previously with prejudice. I don't know.

Mr. Cooper: If your Honor please, I think the first motion, the motion to dismiss the complaint, has not as yet been before the Court. That motion was annexed to our answer.

The Master: It may not have been directly before the Court, or brought up before Judge Picard, but Judge Picard has entered an order of reference to this case to me with the direction that the testimony be taken and the findings of fact and conclusions of law of the Master be reported to the Court, and if I am going to consider a

of the complaint on the basis of
ade, that hasn't been before the
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to go ahead with the proofs.
ght that, perhaps, your Honor
a motion under advisement, so
f all of this, when your Honor
t, and conclusions of law, such
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sing): I intended my ruling to
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we will take the testimony, and
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• • •

was thereupon produced as a
the Plaintiffs, and, after having
testified as follows:

*Examination*

lress?
ay, Mount Clemens, Michigan.
st go to work for The Mount
y?
years ago.
you remain, or have you re-

t the 23rd.
d up to about October 23, 1941?



Q. Is that right?
A. Yes.
Q. What department are you associated with?
A. The Dipping Department.
Q. Of the Mount Clemens Pottery Company?
A. Yes, sir.
Q. And are you associated with a trade union?
A. Yes.
Q. What?
A. United Pottery Workers, CIO.
Q. In what capacity do you serve in the United Pottery Workers?
A. Chairman.
Q. You are also president or chairman of the local?
A. Yes.
Q. Of this union. Is that Local 1083, United Pottery Workers?
A. Yes.
Q. An unincorporated trade association, affiliated with the Congress of Industrial Organizations?
A. Yes, sir.
Q. Will you tell us what department you are in.
A. Dipping Department, yes.
Q. Was that so ever since you began work some ten years ago?
A. Well, I worked about three months in, I don't know what department, I believe it is the sagger room.
Q. What year was that?
A. That is when I first started.
Q. That was some time prior to 1938, then?
A. Yes.
Mr. Lamb: May we have the cards of Mr. Anderson?
Q. (By Mr. Lamb): Mr. Anderson, I hand you herewith cards which have been marked Exhibits 1 to 1-Z, then 1-AA to 1-FF.
Q. (By Mr. Lamb): Will you kindly tell us what those are?
A. Those are our time cards that we punch in and punch out.

Q. And at the top thereof, you notice certain numbers, for instance, the week ending December 31, 1940, the number 759.

Can you tell us what that is?

A. That was my time clock number.

Q. The time clock number varies somewhat, does it not, over a period of years?

A. Yes.

Q. At least there have been certain changes?

A. Yes.

Q. All right. I would like now to refer to Exhibit 2 and have you advise us what those are?

A. That is the first time I ever seen that. I imagine it is my rates, isn't it?

Q. These are your individual earnings records?

Mr. Nunneley: We object to counsel telling him what they are, if he doesn't know.

The Master: If he has never seen them before—

Q. (By Mr. Lamb): It might be well for us to look at them, for you to look at them and advise us in your own words, what they appear to be (handing cards to the witness)?

A. This is a record of my earnings, I guess; that is what it says on there (indicating).

Mr. Lamb: Both of these exhibits we offer.

SUMMARIZE LINE 17, PAGE 79, THROUGH LINE 7, PAGE 86, AS FOLLOWS:

> "Exhibits 1-1 FF and 2-2C objected to by counsel for defendant on grounds that they had not been identified properly and on grounds that time clock cards were irrelevant in proving amount of time worked. The Master overruled the objections except that Exhibit 2-2C is admitted pursuant to stipulation that it is defendant's earning record, 'but it will have to be explained by some employee who has charge of keeping the records, before it will mean anything to the Court.'"

Mr. Cooper: We would like to note on the record our exception to the ruling.

Possibly a little time could be saved if it could be provided by stipulation of counsel, if it is agreeable to the Court, that an exception would be noted to any adverse ruling.

The Master: I don't think you need that any more. I think the requirement of an exception is abolished by the new Federal rules.

Mr. Cooper: Yes, I am familiar with the rules. Perhaps it is just a lingering habit that in the language of the rule the party's rights have not been adequately protected.

Mr. Nunneley: Your Honor, the witness and counsel are holding a conference over the time card.

Mr. Lamb: What is wrong with that?

Mr. Nunneley: If they want a conference, they should go somewhere else and not right on the witness stand.

The Master: I will direct you, then, in the future, not to confer with the witness, except when he is off the stand.

Mr. Lamb: All right.

The Master: Mr. Cooper suggests there be a stipulation that each objection be automatically followed by an exception. I think it is automatically provided under the new rules, but do you want to consent to it so that there will be no question about it?

Mr. Lamb: Well, the record won't be typed up to show an exception after every objection, will there?

The Master: There used to be a rule that the party must take an exception to adverse rulings or he can not take advantage of the objection.

Mr. Lamb: I will stipulate it is not necessary to have an exception after the overruling of the objection.

The Master: That is fine.

Q. (By Mr. Lamb): Mr. Anderson, can you advise us, first, the department in which you work.

A. The Dipping department.

Q. Now, I would like to have you explain a little bit of the physical setup there. Where is the Dipping de-

partment with reference to the gate at which you enter?

A. You mean when we go in the shop?

Q. Yes.

A. Well, the gate is on the—I could make motions to show you better.

By Mr. Lamb:

Q. Well, the motions won't go on the record, so show us as clearly as you can on the record. Use your own words and tell us just where the department is and where the gate is that you come in, and where the time clock is.

A. Well, as far as I recall, the Dipping department is on, I believe, the west side, southwest side of the shop. We come in on the east side, I believe, or the north side—I don't know, I can't remember directions. And we go into our cloakroom—we call it the bullpen. And there we take off our coats and hats and hang them up, and then go into where the time clock is, and it is about 250 feet from the time clock, I believe.

Q. That is, your department is some 250 feet from the time clock?

A. Yes, about that, I guess.

Q. Prior to punching the time clock, you say you go to a cloak-room.

A. Yes.

Q. Or bullpen, so-called, you take off your coat, hang up your hat?

A. Yes.

Q. Then from that point you go to the time clock, is that correct?

A. Yes.

Q. Punch your time clock?

A. Yes.

Q. Then you go directly from the time clock to your Dipping department?

A. Yes.

Q. And how long does it take you to go from the time clock to your Dipping department?

A. Oh, I imagine about half a minute.

Q. About a half a minute. And what do you do when you go to your Dipping department?

A. Well, we go in there and get our glaze ready to go to work.

Q. Yes.

A. Consists of taking water off the glaze and stirring it up and getting it to the right density to dip in.

Q. Getting your glaze to the proper density so that you can dip into it, is that correct?

A. Get the proper coating of glaze on the ware.

Q. And then you proceed to dip, do you?

A. Yes.

Q. You say it takes you about half a minute from the time you punch the time clock until the time you are at work mixing your glaze, and so forth?

A. Yes.

Q. Can you give us any notion about the number of people who punch a time clock, how rapidly they punch a time clock when they punch it within the course of a minute or two?

A. You mean when our department goes in?

Q. Yes.

A. I think the whole—if everybody in the department was by the clock they could punch it in I will say a minute and a half.

Q. Did you advise us the number of employees in your department?

A. No, I don't know exactly how many there is.

Q. Can you give us an estimate.

A. Oh, I imagine around 75.

Q. And then will you tell us whether it is the practice of all the people in your department, from your observation, to punch in the time clock and proceed to your department?

A. No, they didn't all punch in at once.

Q. Well, I mean from the time they would punch in, do they then proceed to their department to work?

A. Yes.

SUMMARIZE LINE 14, PAGE 90, THROUGH LINE 11, PAGE 99, AS FOLLOWS:

> "Counsel for defendant objected on grounds that witness should not be permitted to testify as to activities of other employees, at least without specifying names and occasions; and that witness' testimony should be limited to his own claim. Objection overruled."

The Master: It may be if he does not go beyond that, at that time you may make a motion to strike that testimony, and it may appear it isn't relevant at that time, but at this time I can't say it won't be relevant, and therefore I will overrule the objection.

I think first you better ask him the preliminary question as to whether he did have an opportunity to observe it.

Q. (By Mr. Lamb): Did you have an opportunity to observe the activities of the other people in your department?

A. Yes.

Q. With reference to punching the time clock and going to their work?

A. Yes.

Q. And will you advise us what you observed with respect to the punching of the time clock and going to work of the other people in your department?

SUMMARIZE LINE 4, PAGE 100, THROUGH LINE 10, PAGE 106, AS FOLLOWS:

> "Answer of witness stricken by Master as conclusion."

A. I was in there working and a fellow by the name of Art Baxter came in.

Q. Who was he?

A. He was a fellow dipper that worked alongside of me, we both worked in the same place tub dipping cups,

and Art came in about 10 minutes to 7:00, and right away the foreman, he run over there and he says, "What the hell is the idea of coming in late?" Art says, "I am not late."

The Master: Incidentally, what was the name of this foreman?

A. Ernest Harms. • • •

A. And he says, "I am going to give you a week off." "Well," I said, "that man isn't late, it isn't 7 o'clock yet." He said, "I told that man to come in at fourteen to, and here it is, these fellows been working two or three minutes already," and finally he did send Art home for the day. And, there is other times, he didn't tell it to me directly, but the whole department—

Mr. Cooper (Interposing): Just a minute, I want to renew my objection to "other times" where he didn't tell it to the witness directly. • • •

The Master: Go ahead and tell what the foreman said, and I will overrule the objection.

A. He got us together all in a circle and told us that they wanted us in here at, I don't know exactly whether it was 14 minutes to or whether it was 6:31. Sometimes we would come in at 14 minutes to the hour.

Q. (By Mr. Lamb): 14 minutes to 7:00?

A. Yes, at times we come in at one minute after 7:00.

Q. In other words, you had different starting times?

A. Yes.

Q. And then what did he tell you about reporting in?

A. He says he wanted us in there when he told us to come in.

Q. Yes.

A. He didn't want us coming in five minutes later, or like that.

The Master: What did he say as to when you should come in?

A. I think it was—I couldn't say the exact time, but anyhow it was one minute after the quarter.

Mr. Nunneley: We object, if he doesn't know the exact words, and ask that be stricken.

The Master: He can give the words to the best of his recollection, not the exact words.

Mr. Nunneley: He is guessing about it, he says he doesn't know.

Mr. Lamb: He can give to the best of his ability the substance of the conversation. Go ahead.

A. And in fact we used to ask the foreman "what time in the morning, Ernie?" And he would say, "6:31 or 14 to," if he wanted us to come in before seven he would say, "14 to."

The Master: Just a minute before you proceed. You have been talking about two different instances, and now you refer to a third, every night the foreman telling you to come in. In each case are you speaking of the same foreman?

A. Yes.

The Master: That is Ernie Harms.

A. Yes.

The Master: Has he been foreman of your department for the last four years, say?

A. No, the last two years about, I believe.

The Master: I see. Now, this first conversation that you related was a conversation between one Baxter and yourself and the foreman, Mr. Harms?

A. Yes.

The Master: I don't think you identified the time or place of that.

A. Well, it was in the morning.

The Master: It was in the morning, about how long ago?

A. Before the first walk-out.

The Master: It was before the first strike?

A. I wouldn't know the exact date.

The Master: When was the first walk-out?

Mr. Cooper: April 14.

Mr. Lamb: April 14; what year?

Mr. Nunneley: 1941.

The Master: 1941, last year.

Mr. Lamb: April, 1941.

The Master: Can you recall about how long before that walk-out this incident took place?

A. No, I couldn't.

The Master: And where in the department did this conversation occur?

A. Right by our machine, the dipping machine, the cup-dipping machine.

The Master: Is there one dipping machine for the whole department, or individual dipping machines?

A. No, there was three in there at the time, this was the hand-dipping machine.

The Master: Right in front of the hand-dipping machine?

A. Yes.

The Master: This other instance, where the foreman called all the men together and told them he wanted them to get down at the time he told them to, where did he call you together?

A. It was right in the dipping house; he got us right in a group.

The Master: Would you say that was after working hours or what time?

A. Before we went home at night.

The Master: Just before you left in the evening?

A. Yes.

Q. (By Mr. Lamb): Did he tell you what time to report the next day?

A. I don't remember for sure, I think he did, but I couldn't swear.

Mr. Cooper: If your Honor please, could there be something about the general time of this second conversation?

The Master: Didn't I get that. What did he answer when I asked him about the time?

(Record read.)

The Master: I guess I didn't get it. What time was this with reference to the time of the year? Did you say it was about a year ago? I think you did.

The Witness: I believe I said it was about a year ago.

The Master: I think I had that identified before. He said about a year ago. Is that the best you can recall the time this meeting took place?

A. Yes, sir.

Q. (By Mr. Lamb, continuing): Have you discussed the matter of reporting to work with any other foreman or officials than Mr. Harms?

A. Yes, I have.

Q. Will you give us the name, please?

A. Ted Roth.

Q. Ted Roth. What department was he in?

A. He used to be foreman of the Dipping.

Q. Dipping house. He was foreman of the dipping house. Was he there prior to Mr. Harms?

A. Yes.

Q. (By Mr. Lamb, continuing): And, what instructions did he give relative to reporting to work, or what announcement did he give relative to company policy in connection with reporting for work?

Mr. Cooper: Just a moment. Exception to the form of the question, your Honor.

Mr. Lamb: I should say "if any."

Mr. Cooper: Also, what instructions?

The Master: I think you better start out, you asked him if he had a conversation with some other foreman and he said he did, with Mr. Roth.

Mr. Lamb: Yes.

The Master: The orthodox way to ask this would be what time, and the place, and what did the foreman say. He hasn't said that the foreman gave any instructions, or that he knew of any instructions.

Mr. Lamb: Yes.

Q. (By Mr. Lamb, continuing): Will you fix the time of such conversations and the place, if possible?

A. Well, the last time I talked to him was over at his house about three weeks ago.

Mr. Cooper: I think that would be inadmissible, your Honor.

Mr. Lamb: It is a declaration of a foreman.

The Master: Is he still foreman?

A. No, he is not now.

The Master: Is he employed by the company?

A. No.

Mr. Lamb: It is a declaration against interest.

Mr. Cooper: And it is way subsequent to the period covered by the suit that the foreman was employed.

The Master: Did he quit the plant at the time that this other man, Mr. Harms, became foreman?

A. He told me he got fired.

The Master: At that time?

A. Yes.

The Master: That was the time his employment ceased.

A. Yes.

The Master: Did you have any conversations with him, or hear any instructions from him before that time when he was still foreman?

A. Yes, he used to instruct us to come in at 6:31, too.

Q. (By Lamb, continuing): What was that? You say he used to instruct you to come in at 6:31, too?

A. Yes.

Q. Give us the conversations you had with him relative to your reporting to work while he was still a foreman. When was that?

A. Well, he used to tell us to come in at 6:31 or 14 to.

The Master: When did he tell you that?

A. Well, he used to tell us that a number of times.

Q. (By Mr. Lamb, continuing): When he was foreman?

A. Yes.

Q. That is during the year—can you fix the year; 1939 or 1940?

A. Well, I think he has been out of there about—I couldn't say for sure—about two years, I believe.

Q. But, it was subsequent to October 24, 1938?

A. Yes.

Mr. Cooper: I move to strike that answer, your Honor please. There is no statement of the witness as far as I heard it except the conclusion that Mr. Ted Roth had a conversation as to which the witness expresses a conclusion with some individuals which the witness has not identified.

Mr. Lamb: It wasn't a conclusion; it was an instruction to report to work at 6:31.

The Master: He says, "He used to tell us to report to work." Did you have some conversations with him at the time he was foreman, and since October, 1938, when he told you with a group of employees around that you should come to work at 6:31?

A. No, I didn't exactly, but he was addressing all of us.

The Master: He was addressing all of you, and you were part of the ones he was addressing?

A. Yes.

The Master: When would he do that? In group meetings or—

A. (Interrupting)—Well, at group meetings, and then we would be working at, say, before noon. I would say, "What time in the afternoon, Mr. Roth?" And, he would say, "12:31 or 14 to." Something to that effect.

The Master: I see. Did he ever tell it to you individually when no other employee was around?

A. Yes.

The Master: When was that?

A. Well, I couldn't state the number of times. Probably—I couldn't say every other day, but at least two or three times a week.

The Master: How did these occasions come about?

A. Well, he would be walking through our mangle where I was working and we would ask him what time to come in.

The Master: I think that testimony is competent with the explanations he has given.

Q. (By Mr. Lamb, continuing): Now, I would like to have you tell us any further conversations that you had with Mr. Harms, or further instructions from Mr. Harms, your foreman, relative to your reporting in or checking out other than those about which you have already testified.

A. Yes. For about two weeks straight at one time we were coming in and waiting at the time clock for that minute to go by, and he took the time cards from all of the dippers and punched them in so that we could get in there to work. He waited until 14 to so he punched them in.

Mr. Cooper: I move to strike that on the ground the time isn't fixed, and on the ground it refers to a number of individuals who, apparently, are not involved here.

Mr. Lamb: Let us fix the time.

The Master: Fix the time when this incident occurred.

A. I couldn't fix the exact time.

The Master: Well, to the best of your recollection, then?

A. I couldn't state the exact time. There was a lot of other dippers.

The Master: Would it be as long as a year ago?

A. I don't believe it was a year ago.

The Master: Six months?

A. Probably.

The Master: Is that your best recollection?

A. Yes.

Mr. Cooper: Your Honor please, that would make it subsequent to the time of the action, and I move to strike it out. • • •

The Master: I will reserve a ruling upon this objection. I will have to think over the question. • • •

Mr. Lamb: Do I understand we take the testimony subject to your future ruling?

The Master: Yes, that is right. I will reserve a ruling on it. The only thing is now, that Mr. Cooper also ob-

Q. (By Mr. Lamb) Have you heard the foreman give any further instructions relative to reporting for work, other than this you have outlined, Mr. Anderson?

A. Well, they used to make us work until five minutes to 12 and then get out before 12 o'clock at times.

Q. Yes.

A. And then they—at other times they would work us to probably ten after 12 and then make us get out before quarter after.

The Master: Answer that yes or no, were there any other instructions before those you previously testified to?

A. Yes.

Q. (By Mr. Lamb): Will you kindly give us those instructions?

The Master: The time and place to the best of your recollection?

A. I can't tell you the exact, or the exact words he said.

Q. Who was the foreman?

A. Ernie Harms, but the belt, he used to call it after 12, so they fixed it so we would go out before the belt did, so they wouldn't be a jam up at the clock, so they called us all together, Ernie Harms called us all together and said, "You people work until ten—or five minutes to 12," so we could get out before 12, and we did that for about a year, and then I believe they changed that policy, the foreman did, let the belt go out first, and we went out afterwards. I remember the time they called us up and said, "You fellows have been getting out and getting your dinner. Now give the belt a chance to get out early," and I guess they went out early and we went after.

Q. You refer to the belt, a production line?

A. Yes, the department next to ours.

Q. In other words, the department went at different times, is that correct?

A. Yes.

Q. To lunch?

A. Yes.

The Master: You are referring to another department going to lunch first?

A. Yes.

The Master: Rather, you went ahead of them originally and then the policy was reversed, and you went after they went to lunch?

A. Yes.

The Master: You have spoken of some times, what times were you getting paid to?

A. When we went out five to 12, we got paid to 11:45.

The Master: At that time your shift got paid from 7:45 in the morning until 11:45.

A. No, probably it would vary. We would get paid from, say, 7 o'clock until 11:45.

The Master: 7 o'clock until 11:45?

A. Yes.

Q. (By Mr. Lamb) If they reported at 6:48, you got paid from 7.

A. Yes.

Q. And if you went out at five minutes to 12 you got paid to 11:45?

A. 11:45.

The Master: Well, then what was the afternoon shift, as far as the hours you were getting paid, and the company agreed with the hours?

A. Lots of times we would come in at 12:31, our time would start.

Mr. Nunneley: You are talking about what you got paid? What you mean is you got paid piece-work, didn't you?

Mr. Lamb: Let the Master ask the question.

The Master: I am trying to get the hours of the shift you were working to. Of course I know there is a dispute between the workers and the company, you claim you started work before the shift records commence, as far as the records went, the company records went, your shift was from 7 until 11:45?

A. Yes.

The Master: What time did you come back from lunch, and what time did you get, according to the company records?

A. Various times, sometimes they would have us come in at, say, 12:31, then our time wouldn't start until, it would be a quarter to one, the company would pay us, the time cards wouldn't show until quarter to one.

The Master: The company shift hours varied from time to time, is that the idea?

A. Yes, sometimes we would come in at 14 minutes to one.

The Master: Sometimes the company's shift records would be from 7 to 11:45 and from 12:45 until what time in the afternoon?

A. Until one—

The Master: What time in the afternoon would you usually quit?

Q. (By Mr. Lamb) The quitting time?

A. It was according to how much ware we had out. If we had lots of ware, we would probably quit at quarter of four, and if we didn't we would probably work until after.

The Master: I see. All right, go ahead, Mr. Lamb.

Q. (By Mr. Lamb) I hand you herewith Plaintiff's Exhibit 1, representing time card records as indicative of the time marked "Morning in, Noon out, Noon in, Night out." Will you examine that please (handing card to the witness), and advise us whether or not that card, the time clock records represented by Exhibit 1, were in fact—were in fact punched in and out in accordance with the printed blue and red figures thereon?

A. Yes.

Q. Can you advise us whether or not this is a one or a two-week period, payroll period, represented by each card, Exhibit 1?

A. That is a two-week period.

Q. Can you advise me how you were paid, whether by check or cash or just how you were paid for the two-week period?

A. Well, I think it was a bank draft, I don't think it was a check, it couldn't be cashed only at the bank.

Q. That is at a particular bank?

A. Yes.

Q. And all your employees who received this draft, or money order or check, had to report to this one bank that is named therein, is that correct?

A. Yes.

Q. Would you give us the name of the bank.

A. I believe it is the First National Bank of Mount Clemens.

Q. Do you have knowledge of whether that is a subsidiary or owned by the Mount Clemens Pottery Company?

A. No, I don't know. • • •

Q. (By Mr. Lamb) I call your attention to Plaintiff's Exhibit 1-Z and Plaintiff's Exhibit 2-B for the period ending March 19, 1941, and ask you if you will first state for the record the total hours that are written in pencil on Plaintiff's Exhibit 1-Z?

A. 83-3/4.

Q. That represents the company's computation of the hours that are marked on that particular exhibit?

A. Yes. • • •

**Mr. Lamb: Would it be too much to ask the Master to put on one witness for a minute or two out of order, and excuse this witness so that he can return to Mount Clemens if the Court is only going to continue until 4:30?**

**The Master: That is all right, yes.**

EARL R. TROMBLEY, was thereupon called as a witness herein, and having been first duly sworn, testified as follows:

*Direct Examination*

By Mr. Lamb:

Q. Will you give me your name and address please?
A. Earl R. Trombley, 1273 North Broadway.
Q. Mt. Clemens, Michigan?
A. Mt. Clemens, Michigan.
Q. You are an employee of The Mt. Clemens Pottery Company?
A. I was until January 1, last year, and I quit.
The Master (Interposing): January 1, 1941, or June 1?
A. June 1.
The Master: June 1, 1941.
Q. I hand you herewith what has been marked for identification—
The Master: (Interposing) What will be marked as Exhibit 3.
Q. (By Mr. Lamb, continuing) Plaintiff's Exhibit 3, and ask you to look at them and advise the Court what they are (handing documents to witness)?
A. These are my time cards that I used to punch in and out going to and from work at Mt. Clemens Pottery.
Q. Do you punch those time cards in and out?
A. Yes, sir.
Q. And represent the working time, the actual working time—
Mr. Cooper: (Interposing) I object.
Q. (Continuing) —that you have worked for The Mt. Clemens Pottery Company.
Mr. Cooper: Not only is it a leading question, but it asks only for a conclusion, your Honor.

The Master: It is leading.

Mr. Lamb: I think it is leading. I will ask it in a less leading way, I hope.

Q. (By Mr. Lamb, continuing) Can you advise us whether or not this represents the time that you worked—

Mr. Cooper: (Interposing) Same objection.

Q. (By Mr. Lamb) —for The Mt. Clemens Pottery Company?

A. Well, I couldn't say—

The Master: (Interposing) Just a minute, please. Wait until there is a ruling on the objection before you answer.

Mr. Lamb: Let us have him tell what they are.

Q. (By Mr. Lamb) What are those cards? What do they indicate?

A. These are the time cards that I punched going to and from work at The Mt. Clemens Pottery.

Q. Can you advise us what department you worked in?

A. I worked in the Gloss Department.

Q. How far is your Gloss Department from the time clock.

A. I would say, around 150, 200 feet.

Q. And can you advise us what your procedure was relative to the time that you punched the time clock to the time you started work?

A. Well, we punched our time cards in at 14 to in the morning. It took us about—

Mr. Cooper: (Interposing) Just a moment, I move to strike that. I think the question was asked what the witness did, and the answer, I take it, speaks for someone else unidentified.

Mr. Lamb: Speak for yourself.

The Master: Speak for yourself. What was your procedure?

A. Well, I punched in at 14 to. Went from there directly to work.

Q. Went directly to work?

A. Yes, sir.

The Master: 14 minutes to the hour?

A. Yes.

The Master: Was that always 14 minutes before 7:00, or did that vary?

A. Well, on Mondays it was 6:30 we would go in, 6:31, and we would come out and punch in and that was changed later on. I don't know just exactly when, but it was changed.

Q. (By Mr. Lamb) Mondays of the week do I understand you to say you went in at 6:30?

A. 6:31.

Q. 6:31. Other days of the week what was your usual starting time?

A. 14 to 7:00. • • •

The Master: Let me ask this question. Did you punch the time card in every occasion before you went to work?

A. No, on Monday mornings we didn't.

The Master: What did you do on Monday mornings?

A. We went in and loaded the belt up. Friday night we had to clean the belt off, and it was empty. Monday mornings we had to go in and fill it up and then go out.

The Master: I am asking just what you did.

A. I went out and punched in 14 to.

Q. (By Mr. Lamb) Do you understand the Master's question, and will you answer it completely? You said on Friday nights you did what?

A. Clean up the line, the whole line belt we worked on.

Q. Was that done after you had checked out?

A. Yes, at times it was.

Q. I see. Now, you said on Monday mornings you cleaned up the belt line?

A. No, Monday mornings we filled the line again.

Q. With what?

A. Staggers.

Q. Staggers. And then you went out?

A. And punched in at 14 to.

Q. Then you went out and punched in?

A. Yes.

Q. In other words, on Monday mornings prior to punching in, you did some work?

A. Yes, sir.

Q. In the line of loading the belts, is that what you used to term it?

The Master: Answer out loud. All of this has to go down on the record here. You will have to answer. A nod of your head doesn't get down. Your answer was "Yes"?

A. Yes.

Q. (By Mr. Lamb) How long did you work on Monday mornings in that activity of loading the belts prior to punching in the time clock?

A. Oh, anywhere from 10 to 14 minutes.

Q. I see.

The Master: Was that done every Monday?

A. Every Monday morning.

The Master: All the time you worked at the plant?

A. Later on that was changed. We punched in when we started loading the belt. Not very long. I quit right after that.

The Master: Later you punched the time card before you loaded the belt?

A. Yes, sir.

Q. (By Mr. Lamb) For how long a period did you punch the time clock before loading the belt, how many weeks or months or days or whatever it was?

A. I would say about three years.

Q. When did that practice cease with reference to the time that you quit? When did they start the new practice?

A. I couldn't say exactly. It was around January or February, I imagine.

Q. Of last year?

A. Yes, sir.

Q. 1941?

A. Yes, sir.

Q. So I understand you to say that on Monday morn-

ings, between October of 1938 and January or February of 1941, you would load the belts for some time, and then go out and check in by punching the time clock?

A. Yes, sir.

Mr. Nunneley: We object to all that, of course, as being leading.

The Master: It would be leading if it weren't a summary question.

Mr. Lamb: That is what I am attempting to do is summarize.

The Master: I am not sure in his previous answer he went back as far as October, 1938.

Q. (By Mr. Lamb) When did you start to work, Mr. Trombley?

A. I couldn't say.

Q. What year?

A. I couldn't say that. 1937 or 1938.

Q. (By Mr. Lamb) I understand you started work in 1937 or 1938 for The Mt. Clemens Pottery Company?

A. Yes, sir.

Q. And this practice of working Monday mornings prior to checking in, did that continue from the time you started to work up to the time that you have testified to in February or January, 1941?

A. Yes.

Q. Could you tell me under what instructions, if any, you proceeded to do that work on Monday mornings prior to checking in?

A. Well, the only reason I can give is because everybody else did it, and it was my job to do it.

Q. I see.

A. I didn't get no direct orders to do it; not at that time.

Q. Everyone else in your department had to do it?

A. All the boys on the line. The girls didn't.

Q. I see. You refer to the boys on the line as having to do this work prior to checking in, as being the boys on what line, in what department?

A. In the gloss department, in the gloss line, the stagger line.

Q. Can you give us an estimate of how many men were on that line?

A. I would say 20.

Q. What—who was your foreman?

A. Herman Engleman. • • •

Q. Engleman. Would you give us an estimate of the time worked on Friday nights, as you have described, in cleaning or unloading this line?

A. I would say about a half hour.

Q. Did this occur every Friday night?

A. Yes, sir.

Q. And did all the men in your department participate in it?

A. Yes, sir.

Q. Under instructions of the foreman?

A. Yes, sir.

Mr. Cooper: I move to strike that last question and answer, your Honor.

Mr. Lamb: Well, he said "Yes."

Mr. Nunneley: It is all leading.

Mr. Cooper: It is a very leading question and asks for nothing but a conclusion.

The Master: It is a leading question. You will have to ask him what instructions were given.

Q. (By Mr. Lamb) What instructions of the foreman with reference to this work on Friday night were given?

The Court: That you yourself personally know of; not what somebody else told you. What instructions did he give you, either alone or in the group?

A. Well, I can't think of any he gave me direct. • • •

Q. (By Mr. Lamb) Did you have to do the work?

A. Yes, sir.

Q. Did the foreman know you did it? • • •

A. He was right behind us, and if we didn't do it right, he would call us back in and we would have to do it over.

The Master: The previous question, just to get it out of the way, I will strike it. He has given an explicit answer now.

Q. (By Mr. Lamb) I think the Master would like to have you tell us just what this cleaning process was, or unloading?

A. Well, there was a belt about a foot and six inches wide and about 100 feet long, maybe a little better. It had a pan under it. We had to clean all that dirt out.

Q. What did you do with the dirt?

A. Threw it on the floor and then sweep the floor up and wheel it outside.

The Master: How did you happen to participate in this if you didn't receive any direct instructions from the foreman?

A. Well, we just all started doing it, so I started to do it. It was all the stagger pushers on the line. • • •

Q. (By Mr. Lamb) Now, you say you put this refuse, or the cleaned material, took it off of the machines and put it on the floor?

A. Yes, sir.

Q. And then loaded the stuff from the floor on to the conveyor?

A. On to a wheel-barrow.

Q. And then where did you take it in the wheel-barrow?

A. We had a scrap pile out in the back of the shop and we wheeled that out there and dumped it and it was done, went home.

The Master: With reference to all of this activity, when did you punch the time clock?

A. As soon as the belt stopped, before we started cleaning up. Every time we got done we would go out and punch the cards; the girls all did this, too, punched the cards out and we would come back in to clean up and go home after we had cleaned up.

Q. (By Mr. Lamb) Did that occur every Friday night while you were employed at The Mt. Clemens Pottery Company?

A. Yes, sir.

The Master: Right up to June when you quit, June, 1941?

A. Yes, I am pretty sure it was.

The Master: And during all that period did you punch the time clock before you started the cleaning?

A. Once in a great while.

The Master: I beg your pardon?

A. Once in a great while we did.

The Master: You mean only once in a great while you punched the time clock before you started cleaning?

A. Yes.

The Master: What did you do the other time?

A. I misunderstood your question.

The Master: I am asking you now, during this period in which you were doing this cleaning up, when did you punch the time clock?

A. Punched the card as soon as we got through the work and then cleaned up.

The Master: Was that true all through this period?

A. Yes, sir.

Q. (By Mr. Lamb) Do I understand you now to say that on Friday nights when the belt stopped you then went out and checked the time clock?

A. Yes, sir.

Q. Then you came back and performed these activities of cleaning the machine and taking the cleaned material away?

A. Yes, sir.

Q. Now, are you aware that the other people in your department did the same thing?

A. Yes, they all had their cleaning up jobs to do in my department.

Q. And that occurred on Friday nights?

A. Friday nights.

Q. Are you aware of whether or not the people in your department participated in this loading operation prior to checking in on Monday mornings?

Mr. Nunneley: If the Court please, we make the same objection that we made before. If it is to be considered as anything other than a general background proposition, if it is to be considered as testimony as to any of the other plaintiffs, then they should be named so we will know who it is applicable to. • • •

The Master: I will make the ruling and overrule the objection. I may change my mind later.

Q. (By Mr. Lamb) Relative to the other people in your department, and what they did on Monday mornings—

The Master: Specifically, did they do the loading job you speak of before starting work?

A. The men did.

Q. (By Mr. Lamb) And you observed that?

A. Yes, sir.

The Master: Do you know when the others punched the time clock?

A. The girls would punch in at 14 to 7.

The Master: The girls didn't participate in this?

A. No, not in the loading of the belt.

The Master: You say all the men participated in loading the belt?

A. All the men in that department.

The Master: Did they punch the time clock, that is, others besides yourself, before or after they loaded the belt?

A. They did it after they loaded the belt.

The Master: You know that of your own knowledge?

A. Yes, sir, I have seen them.

The Master: Did you ever see one of them punch it before?

A. I don't believe so.

R. Trombley

ıary 12, 1942

PAGE 155, THROUGH LINE
)LLOWS:

ıdant moved to strike testimony
ey as to doing additional work
at time clock on grounds that it
laim, outside scope of complaint
ars. Motion taken under advise-

ıtinuing) I will hand you here-
t has been marked for identifica-
: 4 to 4-I and ask you if you will
ding exhibits to witness)?
tub, as we call it, that was at-

e stub" or "base stub"?
d to our check, and we tore this
heck.
pay stubs each week?

)loyees of The Mt. Clemens Pot-
stubs?
bject to that. He can testify to

Well, will you tell us what you
r employees, whether or not they

s were the same that I have seen
mployees?

ther employees pay stubs, have



Q. Now, when are these pay stubs given to you?
A. Every other Friday noon.
Q. You are paid every two weeks, is that correct?
A. Yes, sir.
Q. And every other Friday noon therefore you receive a pay check with this stub attached thereto, is that correct?
A. Yes.

SUMMARIZE FROM LINE 12, PAGE 172, THROUGH LINE 7, PAGE 174, AS FOLLOWS:

"Exhibit 4-4I received in evidence as example of method of making wage payments."

The Master: Are you still employed at the plant out there?
A. No, sir, I quit last June, 1941.
The Master: Did you ever make any objection to your foreman or to any superior at the plant about the fact that you were not getting paid the amount of time that you worked out there?
A. No, I don't believe I have.
The Master: Go ahead and cross examine.

*Cross Examination*

By Mr. Nunneley:

Q. Now, Mr. Trombley, how old are you?
A. 23.
Q. 23, and where do you work now?
A. I am unemployed right now. I was employed at the Hudson Motor Car up to last Wednesday.
Q. Up until last Wednesday you were employed at the Hudson Motor Car, and prior to that time how long were you employed at the pottery?
A. I started there in the spring of 1937.

Q. Started there in the spring of 1937, and in what department did you work?

A. Glost department.

Q. During all the time you were there did you work in the Glost department—"g-l-o-s-t," is that right?

A. Yes.

Q. And you, during all of your experience at the pottery, you worked in that one department?

A. Well, there is days I worked in a different department, but just for a day; if they were short a man they would send me over.

Q. But as a general rule you were a man working in the glost department?

A. Yes, sir.

Q. And how many people worked in that department, about?

A. I would say about fifty—some girls and about twenty fellows.

Q. About twenty men, fifteen or twenty, and that is your best judgment on the number, is that right?

A. That is a rough guess.

Q. And did the people in that department work on a belt?

A. Called a glost belt.

Q. That is a sort of conveyor, isn't it?

A. Yes, sir.

Q. In which the stuff is put on at one end and worked on it as it goes along and is finished at the other end, as far as your department is concerned, is that right?

A. Well, they had benches, sort of, see, a belt on both sides, the girls were in the benches.

Q. And they performed an operation and moved it over and put it on the belt on the other side?

A. That is right.

Q. Which end of the belt were you on, the end where the product started in, or where it came off?

A. About the middle, I would say.

Q. You would say you were in the middle. In order for that department to work, practically everybody had to be there, didn't they?

A. That is right.

Q. Practically everybody; in other words, I wouldn't say a hundred per cent, but almost everybody that worked in that department had to be on the job before it could work, isn't that true?

A. Yes.

The Master: Pardon me; just what did you do in your department, what operation did you perform?

A. W[illegible]shed the saggers into the girls' benches.

Q. Can you explain to the court what a sagger is; you are talking about something, I am not too clear on it, and I have been through there several times; what is a sagger?

A. A sagger is sort of a casing that the dishes are put into and baked and run through the kilns.

Q. A casing in which they are put as there, or on there, and goes through the kilns?

A. They are loaded on the cars and sent to the kilns.

Q. And your job was—what did you do with the saggers?

A. Pushed them to the girls and they filled them.

Q. You push them to where the girls were working and they put the dishes in, is that right?

A. Yes, sir.

Q. How large a thing is this sagger?

A. There are four or five different sizes of them, different shapes for different sized ware.

The Master: Let me get this straight, the dishes came in and were put on one conveyor belt and then the girls performed some operation on them and put them on the other conveyor belt?

A. The dishes came from the dipping department, they were put into trucks and they were pushed across the aisle to our department and they had fellows carrying the ware, putting them into the benches and shelves and the

girls would take them off the benches and put them into the saggers.

The Master: Oh, I see. The girls put them in the saggers then. Then what did you do with the saggers?

A. The saggers come down the line. We push them to the girls, and they fill them and push them out the other side.

Q. (By Mr. Nunneley) The saggers come down on the belt?

A. Yes, sir.

Q. And you placed the saggers where the girls could get at them?

A. That is right.

Q. And she did whatever she had to do to each piece and put it in, is that correct?

A. Yes.

Q. When it got to the end of your department, what became of it? Were they loaded on a truck, or something?

A. Loaded on to cars, flat cars.

Q. Sort of flat cars, is that right?

A. Yes.

Q. And the cars go to a kiln, is that right?

A. That is right.

Q. Just to give the Judge some idea, how big is that kiln?

A. I don't know.

Q. Well, it runs nearly the whole length of that plant, doesn't it?

A. About half, I would say.

Q. Half the length of the plant. And in there the cars go through there, and the ware is baked, is that correct?

A. That is right.

Q. And comes out the other end?

A. Yes.

Q. Now, in your department, you got paid how?

A. Got paid by the car.

Q. By the car. In other words, the group in your department were paid by the number of cars of ware that they put out of there, is that correct?

A. That is right.

Q. And you understood that when you went to work there, didn't you?

A. Yes.

Q. You didn't get paid by the hour, ever, did you?

A. No.

Q. You got paid solely by the number of cars that were finished in the department, and that was divided up in some manner among the various employees, is that right?

A. That is right.

Q. So that during all of the period that you were there, you were never working on any hourly basis at all, were you?

A. On Saturdays, when we were called in—

Q. (Interposing) I mean, as a general rule.

Mr. Lamb: Wait a second. Could he finish his answer?

Mr. Nunneley: On Saturdays—

A. We got paid by the hour.

Q. (By Mr. Nunneley) If you did some extra work that wasn't in the department, you got paid by the hour?

A. By the hour.

Q. You were called in extra; when you were called in extra, you were always paid, were you?

A. Oh, yes.

Q. Did you ever figure out how much an hour you got?

A. For that Saturday?

Q. Any time?

A. No, you couldn't figure it out.

Q. You never could figure it out?

A. We tried figuring it out, but we never got, —

Q. (Interposing) You tried to figure out—

Mr. Lamb: (Interposing) Just a minute. Let him finish.

Q. (Continuing) And you couldn't figure out how much an hour you got?

A. We tried to, but we couldn't do it.

Q. (By Mr. Nunneley) And you couldn't arrive at any notion of how much rate you got at all, is that right, per hour?

A. Well, you could come near it, but you couldn't—

Q. (Interposing) You could come near it; all right. Did you get as much as fifty cents an hour?

Mr. Lamb: Objection.

The Master: If he knows.

Mr. Lamb: What hour, what day, what week?

Mr. Nunneley: All the time.

Mr. Lamb: What year?

The Master: When he was working on an hourly basis, you mean?

Mr. Nunneley: When he was working on any basis.

A. Well, that is hard to say. We wouldn't put out the same amount of cars per hour.

The Master: Now, the question is, did you get as much as fifty cents an hour. I will overrule the objection.

A. Well, we couldn't say, because there is hours we wouldn't put out the same amount of cars we would the other hours.

Q. (By Mr. Nunneley) That is right. Some hours you might not put out any; that is right, isn't it?

A. That is right.

Q. But you were being paid at the end of your two weeks period, — did you have enough money so that it was fifty cents an hour for all the time that you were there, that you worked?

Mr. Lamb: I object. The records will be the best evidence of that.

The Master: I will overrule the objection. This is cross examination. Will you read the question?

(Question read.) • • •

A. I can't say whether I got fifty cents an hour or not.

Q. (By Mr. Nunneley) Do you know whether you got more than fifty cents a week?

The Master: Do you know whether you got more than fifty cents a week for a two-week period?

A. I wouldn't say that, either. I couldn't say. . . .

Q. (By Mr. Nunneley) Now, Mr. Trombley, in the operation of this belt work in there, you said a few minutes ago that practically everybody had to be there to work before the thing could get into production; that is right, isn't it?

A. Yes.

Q. And, can you name some of the people that had to be there? Name some of them.

A. That had to be there?

Q. Yes, in order for the thing to start to work. Just who some of the other people were, that had to be in that group?

A. There was Floyd Pearl.

Q. Yes.

A. There is—I can give you a lot of last names. Norman Harmes.

Q. Yes.

A. Norman Harmstead, and myself, George Houtoof.

Q. Did some of the women folks have to be there, too?

A. That all depends. As far as putting out the saggers, they had to be there to fill them.

Q. In other words, in order to get any work done in your department to collect the clay for the cars at the other end, the women folks had to be there, as well as the men, didn't they?

A. Yes.

Q. And under those circumstances, of course, you couldn't start to work until at least most all the people in that group were there, isn't that right?

A. That is right.

Q. Now, do you know a girl by the name of Rita Schulte?

A. Yes.

Q. Is she employed in that department?

A. She was. I can't say whether she is now.

Q. Or was employed in that department. And, for most of the time that you were there?

A. I imagine so.

Q. Now, you said the other day that after the rest of them got through every Friday night, or some Friday nights, anyway, you stayed and cleaned up; is that right?

A. That is right.

Q. And you did that before you,— or after you punched out, is that right?

A. That is right.

Q. And when you would do that, of course, the girls would be gone, wouldn't they?

A. The girls would clean up, but they was always done before we was.

Q. What is that?

A. The girls were always done cleaning up before we were.

Q. They would be done cleaning up before you were?

A. Yes, sir.

Q. And they would punch out ahead of you, is that right?

A. They would go out and punch out before the fellows would.

Q. And you would punch out—do you want the Court to understand now that you punched out after you got through that cleaning up, or before?

A. Before we got through.

Q. Before you did the cleaning up, you punched out immediately upon the stopping of the work, the stopping of the belt, is that right?

A. That is right.

Q. You went out and punched out?

A. Yes, sir.

Q. And then came back and cleaned up, so that under those conditions you men and the girls would all punch out at the same time, wouldn't you?

A. All about the same time.

Q. Practically the same time, and then you would go back and do some work, is that right?

A. That is right.

Q. There wouldn't be any occasion for you staying there after the girls were gone, excepting to clean up, would there?

A. No.

Q. And that clean-up took what, ten or fifteen minutes?

A. Anywhere from fifteen to half an hour.

Q. Did you take turns at doing that?

A. No, it took all of us, all of us fellows.

Q. You didn't do it every Friday, did you, sometimes you did it and sometimes you didn't?

A. Every Friday.

Q. Every Friday you did it?

A. Yes.

Q. By the way, during that period that you worked there, especially the last couple of years, were there some extra help in that department?

A. Just what do you mean, extra help?

Q. Well, some help who took turns at working?

A. No—you mean an extra man?

Q. Yes.

A. Well, we were getting days off, if that is what you mean.

Q. You were getting days off, in other words, there were extra men in the department, so in order to give everybody some work, there were days off for you fellows, weren't there?

A. Yes.

Q. And so that in a good many weeks you had a day off, didn't you?

A. Yes, sir.

Q. And you didn't work at all?

A. Not that day, no.

Q. Not that day, and that was true of all the other men in the department, wasn't it?

A. They had days off.

Q. They all had days off during the week so that at least some of the weeks you didn't even work five days, did you?

A. Some weeks, no. . . .

The Master: Mr. Trombley, let me ask you this: what was the piece-work rate that you were being paid? How much did you get for moving each one of these saggers?

A. Four and a quarter of a cent a car.

The Master: Four and a quarter cents per car?

A. Yes, sir.

The Master: Was that true throughout the entire period you worked there? Was that the same rate?

A. No, we had small raises. I couldn't say just how much.

The Master: You started out at four and a quarter?

A. No, we started out, I think it was an hourly basis when we first started work there. I couldn't say just how much.

The Master: How long ago did you start to work there?

A. In 1937, the spring of 1937.

The Master: You started out on an hourly basis?

A. I think for the first week or two weeks.

The Master: Oh, while you were beginning. I see.

A. Yes.

The Master: And then when you started on a piece-work basis or being paid at piece-work rates, did you start out at the four and a quarter cents per car?

A. Yes, sir.

The Master: And from time to time you got small raises. What was the highest amount you got per car?

A. I think the last raise we got was five cents per car. I don't know whether that is still what they pay or not.

The Master: Did the company furnish you any records showing how many cars you moved during a day?

A. No, sir.

The Master: Was there any blackboard or any record in the department, showing how many cars were moved?

A. The fellows in the back that unloaded the cars, they kept a record, but I couldn't say.

The Master: They kept their own personal records?

A. Yes. Just counted the cars.

The Master: Do I understand there was no record kept by the company each day which showed you how much—

A. (Interrupting) None that I ever seen.

The Master: Did you every day at noon receive a record from the company showing how much you had earned for the previous work, or how much work you had done?

A. No, sir. • • •

The Master: They received the number of hours.

Mr. Nunneley: From the time clock card.

The Master: You received a copy of your time clock card every day?

Mr. Nunneley: His card itself.

A. Just the card itself. • • •

The Master: And that showed the number of hours that you had worked the previous day?

A. Yes, sir.

The Master: Did it show the number of pieces you had turned out?

A. No, sir.

The Master: Did you ever receive from the company—I am trying to find out just what record you did get from the company—did you ever receive from them any record showing the number of pieces that you had turned out on any given day, or any other given period of time, such as a week or month?

A. No, sir.

The Master: Did you ever keep any such record yourself of the number of cars you moved during the day?

A. No, sir.

The Master: Go ahead.

Q. (By Mr. Nunneley) We were talking about whether you didn't earn at least fifty cents an hour during the period you were there, let's say after the first two or three weeks, is that right?

A. I couldn't say.

Q. You don't know whether you did or not?

A. No, sir.

Q. And during any two-week period, did you ever get less than an amount equal to fifty cents an hour?

Mr. Lamb: I object to that.

A. What is that?

Q. (By Mr. Nunneley) During any two-week period, did you ever get less than an amount equal to fifty cents an hour, for all the time you worked?

The Master: Just a minute. Mr. Lamb wants to make an objection to these questions, and I will take a general objection to all of this line of questioning, as to the minimum rate of pay he received on the average, and overrule it.

Mr. Lamb: We went through this particular matter quite extensively before, and I won't repeat it.

The Master: To avoid the necessity of your taking an objection every time, I will make a ruling that you may have a general objection to this line of questioning. Read the question.

(Question read.)

A. I couldn't say.

Q. (By Mr. Nunneley) You couldn't say?

A. No.

Q. When you went into the shop, there is one entrance, isn't there, employees entrance, to the factory or shop?

A. Yes, sir.

Q. And where is that situated?

A. That is on Church Street.

Q. Is it on the northeast corner of the shop?

A. It was on the south side.

Q. The entrance is on the south side of Church Street, but I say it is on the northeast corner of the shop, isn't it?

A. Yes, it was.

Q. So we can get the picture in the record, and before the Court, the plant is located on the southwest corner of Church Street and Rose Street, is that right?

A. Yes, sir.

Q. And this entrance that the employees use, is in the northeast corner of the plant; that is right, isn't it?

A. That is right.

Q. There is one entrance that all the employees use?

A. Yes.

Q. That is, all the production employees use that entrance, isn't that right?

A. Yes.

Q. And at the time you were working there, and up until—most of the time you were working there, how many time clocks were there, if you know?

A. When I quit, there were three of them.

Q. Most of the time you were working there, how many were there?

A. Two.

Q. Two; as a matter of fact, the third one was installed along in March, wasn't it?

A. I couldn't say just when it was.

Q. You don't know just when?

A. Lately.

Q. It was very lately in the procedure?

A. Yes.

Q. So that during most of the period from April, 1941, and prior thereto, during most of that period there were two time clocks?

A. That is right.

Q. And where were they situated?

A. One was on one side of the shop, and the other on the other.

Q. All right. One was on the north side of the shop, is that right.

A. Yes, sir, and one on the south.

Q. And one was on the south side of the shop?

A. Yes, sir.

Q. And they were situated where, with reference—there were some coat rooms there, weren't there?

A. Yes, there were two coat rooms.

Q. Some other departments went to work the same time your department did, didn't they?
A. Not at the same time.
Q. On that side?
A. Not at the same time, our department was first to go in.
Q. Your department was first to go in?
A. Yes.
Q. And the other departments on that side went in afterwards, is that right?
A. That is right.
Q. And you went in ahead of the dippers and those fellows?
A. Certain times we did, and certain times they went in before we did.
Q. I am trying to get it straight, did you go in ahead of them or didn't you?
A. We did at times.
Q. (By Mr. Nunneley): At times you went in ahead of them, and at times you went in behind, is that right?
A. Yes, sir.
Q. And as you came in you went in to the clock, how far is it from that clock over to where you worked?
A. I would say around 175 or 200 feet, somewhere along there.
Q. As a matter of fact, isn't it nearer 400 feet?
A. No.
Q. You wouldn't say it was around 400 feet?
A. No.
Q. It is 175 feet by the aisleways that you had to travel?
A. Yes.
Q. You say it is only 175 feet to where you work by the aisles that you had to travel?
A. Taking a rough guess, I will say it is 175 to 200 feet.
Q. Do you know how long the plant is?
A. No, I have no idea.

Q. Are you pretty well to the west end of the plant?
A. The east end.
Q. What?
A. The east end.
Q. I mean, your department is pretty well to what end of the plant?
A. The east end of the plant.
Q. You don't know then, just how far it is from the clock over to where you work?
A. Not exactly, no.
Q. Your best judgment is that it is only what, 200?
A. 175 to 200 feet.
Q. 200 feet. All right. When you came in you went over and punched the clock, didn't you?
A. Yes.
Q. To do that, you had to get your card out of the rack and put it in a slot, pull a lever and put it in the rack on the other side; that is right, isn't it?
A. That is right.
Q. And from there you walked over to where you were supposed to start to work, is that right?
A. That is right.
Q. Did you have to do anything by way of getting yourself ready to start work?
A. No, sir.
Q. Change your shoes?
A. No, sir.
Q. Or put on an apron?
A. No.
Q. You didn't put on any gloves, or anything of that sort?
A. No, not before we started. We put them on when we had time.
Q. You put your apron on when you started to work?
A. No, sir.
Q. Did you wear an apron when you worked?
A. Once in a while.
Q. Did you change to different trousers, or anything?

A. No, sir.
Q. Did you wear different shoes while you were working?
A. No.
Q. Wore the same shoes?
A. Yes.
Q. But you did wear an apron?
A. Once in a while we did.
Q. Once in a while; wasn't that the usual practice in your department to wear an apron?
A. No.
Q. Did you use anything to protect your hands?
A. Gloves.
Q. Just gloves; didn't put any finger protectors on, or anything of that sort?
A. No, sir.
Q. You didn't do that?
A. Some of them did.
Q. But you didn't do that, that matter of whether they put something on their hands, that is a matter up to each one, isn't it, to protect their hands themselves?
A. Yes.
Q. You didn't do anything of that sort?
A. No, sir.
Q. Some of the people in your department did, didn't they?
A. The girls did.
Q. The girls did, and the girls went in at the same time you did, didn't they?
A. They followed us in.
Q. The whole group went in there approximately the same time?
A. Yes.
Q. They all went through the clock at the same time, didn't they?
A. Yes, sir.
Q. Going in. Now, how long would you say it would take you from the time you would get from the clock to

get over to where you were supposed to work and get ready to go to work?

A. About a minute or a minute and a half.

Q. A minute or a minute and a half. Did you run over there or walk?

A. I walked.

Q. So that you could walk over there and get yourself ready for work in about a minute or a minute and a half?

A. Yes.

Q. Did you maintain the girls could do it that quick or did?

A. Well, I couldn't say just how long it took them.

Q. What?

A. I couldn't say just how long it took the girls.

Q. You don't know how long it took the girls?

A. No.

Q. It took them longer than it did you, didn't it? . . .

A. I couldn't say for sure.

The Master: Incidentally, where did you leave your coat and rubbers and so forth?

A. We had a coat room in there.

The Master: Was that before you punched the time clock, or after?

A. Yes, it was when we first went in.

The Master: Before you punched it?

A. Yes, sir.

Q. (By Mr. Nunneley): You all lined up and got up to the clock, the whole bunch of you, practically, the girls and men, and you say the men all lined up first?

A. Yes, sir.

Q. And they went through the clock and the girls followed you in?

A. Yes, sir.

Q. You say that that 200 feet, that you could walk over there and get yourself all ready for work in a minute and a half?

A. Yes.

Q. And everybody else had to do the same thing, didn't they?

A. Yes, sir; on our side.

Q. What?

A. The fellows on our line did.

Q. Everybody, including the girls in your department, they all had to get over there and get ready to work, didn't you?

A. We had to get the saggers to the bench before the girls got there.

Q. But you couldn't start the belt before you got there?

A. No, that belt was going before we got in.

Q. But you couldn't start producing until they all got there?

A. That is right.

Q. And how long would you say it took the rest of them to get there?

A. I couldn't say.

Q. You don't know how long it took the girls to get there?

The Master: Your answer is "no"?

A. That is right.

The Master: You nodded your head.

Q. (By Mr. Nunneley): From the time you left the time clock until you were really starting to work, how long did that take? What is your best judgment?

A. From a minute to a minute and a half.

Q. A minute or a minute and a half. You were ready to work, then?

A. That is right.

Q. But the rest of them might or might not be; that is right, isn't it.

A. Yes, that is right.

Q. And to do the operation that you were there for, they all had to be there, or practically all of them; that is right?

A. The fellows on our line that did the same as I did, they had to be there the same time I did.

Q. In other words, all of them had to be there at the same time?

A. Yes.

Q. So that it would be at least seven or eight minutes from the time you punched the clock—

Mr. Lamb (Interposing): Wait a second.

Q. (Continuing): —until you and the rest of your group were in there ready to do some work?

The Master: Just a minute, there is an objection.

Mr. Lamb: I object, your Honor. There is no such evidence. He said it took a minute or a minute and a half from the time they punched the time clock to be in actual operation, actual work. In the first place, it is immaterial, after punching the time clock on the employer's premises, in the employer's behalf, whether it takes a minute or two minutes to get in to work. • • •

The Master: I am not going to stop to thrash this out now because it isn't properly before me. The matter is in issue, and that is all that is necessary.

Go ahead with your question. Your question was, I believe, so that it took seven and a half to eight minutes between the time the time clock was punched and the time that all the male employees were there ready to work.

Mr. Nunneley: Is that right?

The Master: Is that right or isn't it?

A. No, that is not right.

Q. (By Mr. Nunneley, continuing): It is not right?

A. No, sir.

Q. How long did it take for them all to get there?

A. I would say anywhere from a minute to a minute and a half, all the men.

Q. All of them were there within a minute to a minute and a half, all of them got through and got over to the clock within a minute to a minute and a half?

A. That is right. • • •

Q. (By Mr. Nunneley, continuing): So that during the day, at least, it took you a minute to a minute and a half at least to get back to the time clock, too, didn't it?

A. Around that.

Q. Also at noon. That would be four times that it took you a minute or a minute and a half, anyhow?

A. Yes, sir.

Q. Now, if it should turn out that this department of yours is 400 feet from the time clock would you extend your minute and a half any?

A. I wouldn't extend it a bit.

Q. You wouldn't extend it a bit. You never timed yourself, however, did you?

A. No.

Q. Nor measured the distance?

A. Never measured it.

Q. You're estimating that it took you a minute to a minute and a half?

A. Yes, sir.

Q. And that all of the rest of them got there the same time you did every day?

A. About the same time.

Q. Now—

The Master (Interposing): Do I understand—let me get this clear, before you could commence work all the men employees in the department had to be there and on the job?

A. Yes, sir.

The Master: And that, you said before, amounted to about twenty?

A. If they were one short, or something like that, we would still run, but the majority had to be there.

The Master: The majority had to be there?

A. The majority in the department.

The Master: How many short could you have before you would be able to run? Suppose you had fifteen there, could you run with fifteen of the twenty?

A. I think we could.

The Master: Could you run with half of the number?

A. No, I don't think so.

The Master: Do I understand it is not necessary for the women to be there before the men begin their work?

A. The men had to be there first.

Q. (By Mr. Nunneley, continuing): They couldn't be

working very long until the women had to work, didn't they?

A. That is right. The women would come in right behind us.

Q. They would come right behind you. In other words, you shoved the things over there and they filled them, and it went right along in a continuous process, didn't it? You shoved it on to the benches and they filled them, and they kept them going right along; that is right, isn't it?

A. Yes.

Q. And, if the women weren't there you fellows couldn't work over a minute, could you?

A. Work longer than that. We had tables there that we could pull them off.

Q. But, within a minute or two you would be tied up, too, if they weren't taken out of the way, isn't that right?

A. That is right.

Q. So that, as a matter of practical working-out, they all had to be there in order for you to do any amount of work, didn't they?

A. That is right.

Q. Now, do you want to tell this court that all the employees of that department, 85 of them, got in there from the time the time clock was punched, that they were all in there within a minute and a half from the time the clock was opened?

The Master: I think the testimony so far is just pertaining to the male employees.

Mr. Nunneley: Now I am asking him about all of them.

A. I wouldn't say.

Q. (By Mr. Nunneley, continuing): You wouldn't say. Could you give us any idea how long it would be from the time the time clock was opened until they were all in there ready to work?

A. No. I couldn't tell you that.

Q. You don't want to give us any idea. You don't know, is that right?

A. I couldn't say.

Q. You couldn't say. But, there was a period of time between the time that the clock was opened for your department and the time that they could all get down there and be ready to work? That is right, isn't it?

A. Yes, there was a certain amount of time.

Q. Now, ordinarily the clock was opened at what time for your department?

A. 14 minutes to 7.

Q. 14 minutes to 7, so that before that time they couldn't go through the clock, couldn't punch it?

A. That is right.

Q. It wasn't opened?

A. That is right.

Q. So that the whole 85 of them had to go through there between the 14 minutes to 7 and whatever time they actually started to work; the whole 85 of them or practically all of them had to go through, get down and get in their places, and get ready to go to work, didn't they?

A. Yes, sir.

Q. And you say some of the girls did put on things to protect their hands, that is right?

A. That is right.

Q. What else did they do to get ready to work?

A. I couldn't say just what they did.

Q. What?

A. I couldn't say just what they did.

Q. You couldn't say just what they did. And you don't want to say how long that took, do you, for everybody to get down there and be ready to work from the 14 minutes to 7, how long it would be before everybody was there and ready to work?

A. I don't know just how long it took each one of them to get down there ready to go to work.

Q. Could you give us your judgment how long it would be before they would all be there so that you could start, is what I am getting at?

A. No, I couldn't do that, either.

Q. You couldn't do that either. So that it is true that

so far as actual working is concerned you didn't work until they all got down to the department, or practically all of them as you have indicated to the Master? That is right, isn't it?

A. Yes, we did. We—when we got in there the belt started going. We had to be there to get them saggers off, or get them to the benches, either way.

Q. Didn't you just tell us you couldn't work more than a minute or two, at least, unless everybody was in there? Didn't you just tell us that?

A. I said we could work. Not very long, but we could work.

Q. I asked you didn't you just tell us you couldn't work more than a minute or two unless they were all in there ready to work?

A. Yes.

Q. Yes. That is true, too, isn't it?

A. A minute and a half to a minute, something like that.

Q. Yes. That is right. And, isn't it true that it was 7 o'clock generally before they were all in there?

A. No.

Q. And ready to work?

A. No.

Q. That isn't true?

A. We were all working by 7 o'clock.

Q. You were all working by 7 o'clock?

A. Yes, sir.

The Master: How much before 7 were you all working regularly?

A. I couldn't say. Production was started. The saggers was being loaded I would say around five or six minutes to 7.

The Master: Do you have a wrist watch?

A. Yes.

The Master: When you say that are you just guessing at it or have you looked at your watch from time to time on the job?

A. No, I never wore a watch. You couldn't wear a watch.

The Master: Was there any clock in the department?

A. Not that you could see. • • •

Q. (By Mr. Nunneley) There is a whistle that blows there generally five minutes to 7, isn't there?

A. I couldn't say if there is; there is a 7 o'clock whistle.

Q. Well, there is a whistle blows twice, or used to, when you were working there anyway it used to blow twice, didn't it? • • •

A. I don't know.

Q. (By Mr. Nunneley) You don't know; you worked there all those years and you don't know whether the whistle blew in the morning twice, is that right?

A. That is right.

Q. It blew once, didn't it?

A. At 7.

Q. You know that?

A. Yes.

Q. So that you knew when it was 7 o'clock?

A. Yes, that is right.

Q. Now, do you want to tell us it didn't blow at 5 minutes to 7 every morning, too?

A. I wouldn't tell you it didn't and I wouldn't tell you it did.

Q. You wouldn't say it didn't and you wouldn't say it did. To the best of your judgment then it was 6 or 7 minutes to 7 when you all got to work, is that right?

A. When we started loading the cars, yes.

Q. That is right, and then when you left at noon you all quit at the same time?

A. All the fellows, yes, in our department.

Q. And the girls, everybody in your department, you all left at the same time?

A. Yes.

Q. And you all went over to the time clock, didn't you, to go out?

A. Yes.

Q. And punch your way out?

A. Yes, sir.

Q. (By Mr. Nunneley): How long did it take you to get over to the clock?

A. I will say a minute or a minute and a half.

Q. For you?

A. For me.

Q. And all the rest of them would go on out too, if they wanted to go out?

A. That is right.

Q. And coming back at noon, after your noon hour, the time that you had off at noon, you had to do the same thing that you did in the morning, didn't you?

A. Yes.

Q. What time did you generally go out at noon?

A. There was different times; we sometimes go out before 12 and sometimes after 12.

Q. It would depend on how the work was progressing?

A. That is right.

Q. Those times varied?

A. That is right.

Q. And there was a time specified when you had to come back?

A. Yes.

Q. When you came back you had to start up just the same as you started up in the morning again, didn't you?

A. Well, yes, we did.

Q. Yes, and so it would be the same length of time after lunch that would elapse between the time you punched the time clock and the time you started to work, as in the morning; that is right, isn't it, approximately; that is right, isn't it?

A. About the same.

Q. Yes. And then of course in the evening when you got through work, whatever time your place closed up or stopped, did everybody go over to the clock then?

A. As soon as the belt was stopped.

Q. As soon as your belt was stopped everybody went over to the clock?

A. Yes, sir.

Q. And went out?

A. Yes.

Q. Went home. Did you wear the same clothes to work that you wore home?

A. Yes, sir.

Q. So that when you came to work in the morning you didn't have to change any clothes, is that right?

A. Just hang up my coat.

Q. Just hang up your coat, and when you left all you had to do was put it on?

A. That is right.

Q. Or your overcoat, or whatever you happened to be wearing?

A. That is right.

Q. You were not required to change any clothes or put on any uniform?

A. No.

Q. Or wear any kind of equipment; you could wear whatever you wanted to?

A. That is right.

Q. Now, witness, you said the other day that every Friday, as I recall it, nearly every Friday you stayed after the girls and the rest of them had left and did some work?

A. That is the boys in our department did.

Q. The boys in your department. How many of you would that be?

A. We all had to stay but four boys, there was four in our line and three wadders, we all had to stay about the same length of time, fifteen minutes to half an hour.

Q. And you say your practice on that, on each of those occasions you would go and punch out at the same time the women folks did, is that right?

A. Yes, most of the time we did.

Q. And later then you would go back in and do the clean-up and you wouldn't put that down at all?

A. No, sir.

Q. You wouldn't mark that, and is that what you did during all the time you worked there?

A. Every Friday night.

Q. Every Friday night, and I think you said this morning that Rita Schulte worked there with you in that department?

A. Yes, she did.

Q. Right close to you?

A. Yes, she did.

The Master: Witness, you have just said that most of the time on Fridays you first punched the clock and then went back and did the clean-up work and then went out. Was there some of the time you waited until the work was done before punching that?

A. Yes, there is times we did.

The Master: How was it determined which you would do? How did you decide whether you were going to punch the clock first?

A. We wasn't supposed to.

The Master: I beg your pardon?

A. We wasn't supposed to punch.

The Master: You weren't supposed to punch at what time?

A. After we were through. We were supposed to do the work.

The Master: Who told you that?

A. The foreman.

The Master: What was his name again?

A. Engleman, Herman Engleman. * * *

The Master: Can you give me, roughly, about the percentage of the occasions on which you punched the clock after you did this work, as compared with the number of times you punched it before?

A. We punched it before, most of the time.

The Master: How did it happen on certain occasions you punched the clock afterwards?

A. We just punched, that is all; just didn't go out and punch it.

The Master: Was the foreman around?

A. Well, he was around, but not around us. He was around the place.

The Master: Didn't the foreman check up to see whether you went out to punch the clock?

A. No, I don't believe he did.

The Master: He just told you you should go out and punch it first?

A. Oh, yes, that was the understanding.

The Master: He never checked up to see whether you complied with his instructions?

A. I don't believe it.

Q. (By Mr. Nunneley) Now, Mr. Trombley, your weeks were figured from Wednesday through Tuesday all the time, weren't they?

A. You mean the pays?

Q. Yes.

A. Yes, that is right.

Q. From Wednesdays through Tuesdays, then you were paid on Friday?

A. That is right.

Q. You worked Wednesday, Thursday and Friday, and Monday and Tuesday, that is the way the weeks were set up all the while on the pay cards?

A. That is right.

Q. And it is true, isn't it, that each day when you came in these cards, I will show you one of them, Exhibit "H," when you came in in the morning you took your card out of the rack, didn't you?

A. Yes, sir.

Q. And you put it in a slot in the clock?

A. Yes.

Q. Pulled the lever and put it in a rack on another side?

A. Yes.

Q. That is right, under your numbers; they are all numbered?

A. Yes.

Q. And it is also true, isn't it, that each day by noon the figures that are in red down the side were on the card, isn't that true?

A. That is right.

Q. And you also knew that that was the figures of hours worked that the company computed for you too, didn't you? * * *

A. Yes.

Q. Did you meet Mr. Doll around the plant? He used to be around the plant pretty near every day, didn't he? Senior, I am talking about?

A. Yes, we seen him.

Q. Come on through, talked to different people, wouldn't he?

A. He would stop once in a while. * * *

Q. (By Mr. Nunneley) So that he occasionally had come into your department, practically would be in there every day or two, wouldn't he?

A. About every other day.

Q. About every other day or so he was in there, and at these meetings at times on a good many occasions, he told you folks if you had any complaints to make, he would be glad to receive them, didn't he?

A. I believe he did.

Q. What?

A. I believe he did.

Q. Yes. And, he was around right in your department where you could talk to him most any day, couldn't you? Every other day anyhow; that is true, isn't it?

A. Yes, we talked to him.

Q. You never made any complaints to him, did you?

A. I didn't think it was safe.

Q. Either about your wages, or hours, or anything else; isn't that right?

A. No, sir, I did not.

Q. In spite of his assurances and requests that if you had any you should make them to him, isn't that right?

A. That is what he said.

Q. That is what he said. And, he repeatedly assured you that he wanted you to make them if you had any; that is true, isn't it?

A. He said that.

Q. What?

A. He said it.

Q. Yes. You yourself never made any complaint about the way your hours were figured, or your pay, or anything connected with it, did you?

A. I didn't dare to.

Q. You didn't dare to. You thought he wouldn't keep his word, is that right?

A. That is right.

Q. That is right. You suspected that he wouldn't keep his word, so that you didn't talk to him for that reason?

A. No.

Q. Now, this exhibit, showing you Exhibit H, that is your time card— . . .

Q. Exhibit 3-H. That is your time card, is it not (handing exhibit to witness)?

A. Yes, I believe it is.

Q. And for the pay that would begin or end November 14, 1939, is that right?

A. That is right.

Q. That is right. Now, on Friday of that day, will you look at it and see what time you checked out?

A. 4:41.

Q. 4:41. Now, isn't it a fact that each—that you boys on this clean-up business every other week half of you stayed, and the other half left? Now, isn't that the fact?

A. No, it is not.

Q. That isn't the fact?

A. No, sir.

Q. Some weeks you didn't stay; that is right, isn't it?

A. No, sir. Every Friday night we had to clean that.

Q. Did you say every Friday night, that is what I am asking you?

A. Yes, sir, I did.

Q. You are telling the Court you stayed every Friday that you worked; every single one?

A. Yes.

Q. You stayed every single Friday, and there was no division between the boys in your group. Part of you did it one week and part did it the next week?

A. No.

Q. No such thing as that. Now, I show you Exhibit 5, a time clock card headed, "Rita Schulte," and ask you if you can tell from that card, what time she checked out on that Friday (handing exhibit to witness)?

Mr. Lamb: May he be asked to show what the time card shows?

The Master: What time does the time card show for Rita Schulte, on that day?

A. 4:14.

Mr. Nunneley: 4:14?

The Master: Is that the same day, as the 4:41?

Mr. Nunneley: Yes.

Q. (By Mr. Nunneley) They are both headed November 14th card, aren't they?

A. Yes.

Q. That is the last Friday on the card. Now, I will ask you on the first Friday on your card what time you punched out (handing exhibit to witness). The first Friday on the same card, what time did you punch out?

A. 4:25.

Q. 4:25. I will show you the Rita Schulte card, and ask you that same Friday what time does it show she punched out (handing exhibit to witness).

A. 4:01.

Q. 4:01. In other words, at least on that Friday you would say you had punched the clock, didn't you?

A. Yes.

Q. On that one?

A. Yes, I did.

Q. And you punched it, after you cleaned up, wouldn't you say?

A. Yes, I would say that.

The Master: Let me see that, please?

(The exhibit above referred to was handed to the Master.)

Q. Now, I will show you Exhibit 3-I, and that is also one of your cards, and that week for some reason or other, you worked on Saturday,-I believe. Will you look and see (handing exhibit to the witness). The November 28th card; because of being off Thanksgiving, you worked Saturday, isn't that right?

A. That is right.

Q. And you do the work on Saturday that normally you do on Friday, is that right?

A. That is right.

Q. Now, what time does the card, Exhibit 3-I, show that you punched out on Saturday of that week?

A. 4:29.

Q. 4:29. And I will show you Exhibit 5-A, and what time does the card show that Rita Schulte punched out on Saturday of that week?

A. Four o'clock.

Q. So that again that week you must have punched your clock after your clean-up; that is right, isn't it?

A. Yes.

Q. Now, I show you Exhibit 3-I for the next week of that same card, and what time did you punch out on Friday?

A. 4:48.

Q. 4:48. And I will show you Exhibit 5-A, and ask you what time Rita Schulte appeared to punch out?

A. 4:28.

Q. 4:28. So that again you must have punched out after your clean-up; that is right, isn't it?

A. It must be.

Q. Now, I will show you Exhibit 3-J, card of December 5th, and ask you if on that date you again worked on Saturday?

A. 2:47.

Q. And I will show you Exhibit 5-B, and ask you at

what time Rita Schulte punched out, who worked along with you?

A. 2:27.

Q. So again you have punched out after your clean-up, didn't you?

A. Yes, according to them cards.

The Master: Incidentally, is this Rita Schulte one of those for whom a designation has been filed?

Mr. Nunneley: I believe so. I believe she is one of those for whom a designation has been filed.

Mr. Cooper: Yes, that is right.

Q. (By Mr. Nunneley) And at the end of that week, it is shown on this same card, on Friday, Exhibit 3-J, what time did you punch out?

A. 4:47.

Q. And showing you Exhibit 5-B on that Friday, what time did Rita Schulte punch out?

A. 4:25.

Q. So again you stayed after, and made your time clock card record, didn't you?

A. According to the cards.

Q. I will show you Exhibit 3-K, and ask you what time you punched out on the first Friday that is shown on that one, being the—

A. December 12.

Mr. Nunneley: December 12, 1939.

A. 4:38.

Q. (By Mr. Nunneley): 4:38. I don't know whether you can tell from this one what time Rita Schulte punched out. There seems to be a mark there. It is perhaps indicated.

A. It is either 4:09 or 4:15, according to that; either one. * * *

Q. (By Mr. Nunneley): If it is either 4:09 or 4:15, you stayed and did your clean-up afterwards, as far as the record shows?

A. Not necessarily.

Q. What?

A. Not necessarily.

Q. Not necessarily?

A. No. If we had saggers on the line, and she was through, she went out. We had to stay there until the saggers were cleaned up.

Q. You had to stay there until the saggers were cleaned up?

A. That is right.

Q. I see. You want to say now that that doesn't indicate she quit before you did? • • •

A. It is possible. If she got through, that doesn't mean she is working with me. I got eight benches to take care of. She is on some other eight. Even if she is through, I have still got to wait until mine are cleaned up.

Q. You have got to wait there until yours are finished?

A. That is right.

Q. All right; what girls worked on your benches?

A. There were a lot of them.

Q. Give us the names of them so we can see about this?

A. Helen McDonald, Beatrice Bok; I can't think of any more right offhand.

Q. You can't think of any more?

A. No.

Q. Just two. You did tell us this morning that Rita worked right beside you, right there close to you; we asked you about it?

A. I said she was working with me; all the girls are working with me on that line. ■ ■ ■

Q. On Exhibit 5-C, being the Rita Schulte card, on the second Friday on there, what time does it indicate she checked out?

A. 4:31.

The Master: What is the other?

Mr. Nunneley: 4:53.

The Master: 4:53 for him.

Q. (By Mr. Nunneley) So again you stayed after she did, didn't you?

A. Yes, sir.

Q. And if the cards of a good many of the girls showed they checked out ahead of you, that would show you did the cleaning, wouldn't it?

The Master: Let's get this witness' testimony on that clear. If Rita Schulte punched out before, considerably before you did, say 20 or 25 minutes before you did, would that indicate that that additional time was spent by you in doing cleaning?

A. No.

The Master: What else could it have been?

A. We can't clean that belt until it stops, it is a long belt, it runs down the length of the C. R. Department, then there is the bench, and they shift over the other belt, this other belt carries them all the way back to the cars, and this line has to be empty before the belt stops.

The Master: So you have to wait until the line gets empty—

A. (Interposing) Before we can clean them. And, if we fill up our benches, and waited for the girls to put them out, and for the belt to get all done, then did our work and punched out, it would be a lot later than the cards indicate.

The Master: How much later, how long would it take to get all that done?

A. It takes half an hour to clean the belt alone.

The Master: How long does it take to clear the belt?

A. About a good ten minutes, after they stop unloading.

Q. (By Mr. Nunneley) Now, let's see, in reference to Rita Schulte, there is one belt there, or two?

A. There are two belts.

Q. Two belts?

A. That we were working on.

Q. That you work by, two belts, and the ware, the stuff, whatever it is, comes along on one belt, and is passed over to the girls and they fill it and put it off on the other belt?

A. That is right.

Q. They work between the belts?

A. That is right.

Q. (By Mr. Nunneley) So that what you want us to understand now is that Rita Schulte might have quit before you did, and that wouldn't indicate that you were cleaning up?

A. No, it wouldn't.

Q. If it developed that most of the girls in that department quit before you did, what would that show?

* * *

SUMMARIZE LINE 11, PAGE 256, THROUGH LINE 11, PAGE 260, AS FOLLOWS:

"Counsel for plaintiffs objects."

* * *

The Master: Let me ask you this, witness; did the girls and the men go out and check out at the same time in the afternoon?

Mr. Lamb: On Friday afternoons.

The Master: On Friday afternoons.

A. During the week, at the same time the belt stopped there, we all went home.

The Master: Now, on Friday afternoons, what did you do?

A. On Friday afternoons, we punched out when we got through work, and went back and cleaned up.

The Master: The girls punched out, too, and on Friday afternoons when they got through working?

A. That is right.

Q. Did you go out at the same time and punch out?

A. Not necessarily. If they go before I go, they go and punch out. I punch out when I go out.

The Master: Why is there a difference between Friday and the other days of the week?

A. Because that is the time we clean up the belt.

The Master: You say the cleaning is something you do afterwards, and doesn't have anything to do with the time you punch out because you punch out before you clean?

A. Yes.

The Master: Then, why is it you have a different time that you punch out with reference to the time the girls punched out on Friday, than on other days?

A. Because when it comes time to quit during the week, they stop the belt. The benches are full and everything. In the morning you just start right up and go to work, and when it comes time to quit, they stop the belt again, no matter where the saggers are.

On Friday night they all have to be pushed off the belt, and the girls have to fill them.

Mr. Lamb: On Friday, there is an additional operation of taking the things off the belt?

A. Yes. It is cleaned up. The saggers have to be taken off.

The Master: Before you start cleaning?

A. Yes, and loaded on the benches.

Q. So that the best Rita Schulte could get done ahead of you would be ten minutes anyhow?

A. It could be that, it could be less.

Q. It could be less. But, I say; that is the most she could get done ahead of you?

The Master: What is your answer?

A. About ten minutes, I would say.

Q. (By Mr. Nunneley) Now, the fact is, most of the people don't leave that belt until it stopped, isn't that right?

A. No.

Q. On any night?

A. On any night when that belt stopped, they all left; didn't leave before.

Q. They didn't leave before?

A. No.

Q. On Friday night the belt ran until it was cleared, you say?

A. That is right.

Q. And that was how long?

A. I would say ten minutes.

Q. Ten minutes. So you can't tell, of course, from this card, whether the belt was cleared when Miss Schulte left or not, can you?

A. I don't believe I can.

Q. You can't tell. And no one else can, that is right, isn't it?

A. I don't think so.

Q. But it would be true that if most of the girls left, the belt must have been cleared, isn't that right? • • •

A. The belt wouldn't be cleared until all the girls left to punch out. They have to stay there and fill their saggers, push them out on the line, and then they go. • • •

Q. I will show you Exhibit L; what time did you go out on Friday, that is December 31st? • • •

The Master: Exhibit 3-L, December 31, 1939. • • •

A. 4:55.

Q. (By Mr. Nunneley) 4:55. Did you work on Saturday that day, the last week on the card?

A. I don't believe I did.

Q. You don't believe you did? I show you the Rita Schulte card; it appears that she did, doesn't it?

A. Yes, she did.

Q. Saturday would be the last work day of that week?

A. That is right. • • •

Q. (By Mr. Nunneley) I will show you Exhibit 3-N, being the week of January 23rd, I think it is, 1940, and ask you what time you checked out on Friday of the first week, as shown on that card? • • •

A. 4:46.

Q. 4:46. And, I will show you Exhibit 5-N, and ask you what time it appears that Rita Schulte checked out on the first Friday?

A: 4:25.

Q. 4:25. So again she gets out 15 or 20 minutes ahead of you; that is right, isn't it?

A. That is right.

Q. Now, on Exhibit 3-N, what time did you check out on the second Friday?

A: 4:35.

Q. And she checked out when?

A. 4:37.

Q. For once she got out after you, didn't she?

A. Yes.

Mr. Lamb: Temporarily she was out—or temporarily you were out, I should say.

Q. (By Mr. Nunneley) Well, you don't need to tell him the story, I don't think.

Exhibit 3-O, your time clock card, week of February 6, 1940, what time did you check out?

A. 4:29.

Q. I show you Exhibit 5-O; what time does that show that Rita Schulte went out?

A. 4:04.

Q. So again she got out there ahead of you?

A. That is right.

Q. And the same, Exhibit O, in the second week, what time did you check out?

A. 4:56.

Q. I show you Exhibit 5-O, Rita Schulte; what time did she check out?

A. 4:34.

Q. (By Mr. Nunneley) Would there be anything that Rita Schulte could be doing there, after you got through?

A. Yes, she could be filling saggers.

Q. She could be filling saggers after clean-up and everything?

A. No, not after the cleaning had been done.

Q. If she went out ten minutes after you, would that mean anything to you?

A. No, not if the belt is all cleaned, it don't.

Q. What is that?

A. If the belt is all cleaned, it don't.

Q. If the belt is all cleaned, it don't. So, if she went out ten minutes ahead of you, that doesn't mean anything?

A. Not to me.

Q. Not to you?

Mr. Lamb: It means she went out ten minutes ahead of him.

Q. If she went out ten minutes after you, what does it mean? Nothing at all?

A. If the belt is all cleaned, I am done then. I don't know who stays there, or why.

Q. So, if she went out after you, the belt is all cleaned and everything?

A. Yes.

Q. Or else you quit before cleaning up. She wouldn't be there loading saggers after the belt was cleaned, would she?

A. No.

Q. So, if she went out after you did, it would indicate that the belt was all cleaned and everything else, wouldn't it; if she went out after you did?

A. Yes, it would. • • •

Q. (By Mr. Nunneley) Now, I will show you Exhibit 3-P, and ask you if you can tell from that what time you went out on the first Friday shown on that one, being the one of March 5, 1940 (handing exhibit to witness)?

A. It looks like 4:43.

Q. 4:43. And, Exhibit 5-O, what time would you say— • • •

A. 4:52.

The Master: 4:45 and 4:52.

Mr. Nunneley: 4:43, I think he said.

The Master: 4:43 and 4:52. How do you explain that? What would your explanation be, if any, for her having punched the clock nine minutes from you on this date?

A. Well, if the belt was cleaned—I couldn't say what it was, but if I got through my work before she had her saggers through, I just punched out before she did, that is all. You see, she could have been stuck with a sagger, almost anything could have delayed her. • • •

The Master: If Rita Schulte was working on benches that you weren't pushing saggers to, she might get through with her work shortly before or shortly after you?

A. That is easy, yes.

The Master: And would you and she each go and punch the time clock as soon as you were through, without waiting for the rest of them to get through?

A. Oh, yes, if we had all our saggers cleaned up, we would be free to go and punch out, but as long as we had saggers, we had to put them in first before we even left the belt.

Q. (By Mr. Nunneley) You had to put the saggers on the bench before you left the belt?

A. That is right. We had to see they was all cleaned up.

Q. It would take the girl a minute or two to fill a sagger?

A. I couldn't say just how long it took.

Q. It is a very short time, isn't it? They fill a sagger, they fill a lot of them in a day, that is right?

A. Oh, yes.

Q. I see. I will show you Exhibit 3-R being your card for March 19th, and asked you what time you checked out on the first Friday, shown on that card?

A. 4:54.

Q. 4:54. By the way, that week, how many hours did they give you credit for?

A. 8¾.

Q. Now, I will ask you what time Rita Schulte checked out according to that Exhibit 5-R, the same Friday?

A. 4:28.

Q. Now, on your second Friday on that card, Exhibit 3-R, what time did you check out?

A. 5:07.

Q. And what time did Rita Schulte check out?

A. 5:08.

Q. So that time she didn't get out of there until after you did, did she?

A. That is right.

Q. I show you Exhibit 3-S, period of April 2, 1940, the first Friday shown on that card, when did you check out?

A. 5:07.

Q. And Rita Schulte, on Exhibit 5-S, the first Friday?

A. 4:39.

Q. And on Exhibit 3-S, on the second Friday on your card, when did you check out?

A. 4:53.

Q. And Exhibit 5-S, when did Rita Schulte check out?

A. 4:32. • • •

Q. Well, you didn't always punch in at 14 minutes to, did you?

A. Most of the time we did. There were a few exceptions we didn't. • • •

Q. In fact, the clock wasn't opened until 14 minutes, was it? You couldn't get through there until then?

A. No, you couldn't.

Q. That is right. So that that is the earliest you could possibly get in, is that what you mean?

A. Unless we had orders to come in earlier.

Q. Unless they opened the clock earlier, but I say if the clock was opened at 14 minutes to 7 or 6:46, did you ever punch in at 6:45, for instance, or did you ever punch 6:45 ahead?

A. I might have.

Q. You couldn't, could you?

A. What?

Q. You couldn't very well, if the clock wasn't open, could you?

A. The clock is not locked. There is just a foreman standing near there. There might have been a time I punched in at a quarter to.

Q. Somebody standing there to see you don't punch in more than 14 minutes ahead of the next hour, or quarter hour, or half hour, isn't that right?

A. That is right.

Q. It isn't open to do it? • • •

Q. There was somebody standing there so that you were not permitted to punch the clock more than 14 minutes to the hour; that is right, isn't it?

A. That is right.

Q. Whether it was locked, or however it was done?

A. That is right.

Q. So that you couldn't do it more than 14 minutes to, we will say, to 7, or whatever the time happened to be; 14 minutes to the next quarter hour; that is right, isn't it?

A. That is right. . . .

Q. (By Mr. Nunneley, continuing) What you meant to say is that you always punched in, or as a general rule you punched in at 14 minutes to 7 or some time between then and 7?

A. That is right.

Q. That is what you mean to say. And, you don't mean to pretend to tell us that you always went in at 14 minutes to 7, do you?

A. Unless we had orders to come in other times.

Q. Well, now, which is it? Now you are changing.

A. I am just telling you. Our regular time for starting was 14 minutes to 7. If we had orders to come in at 6:31 or 7:01, we had to do it.

Q. The time to get there was 14 minutes to 7?

A. That was our regular starting time.

Q. That was your regular starting time. All right, now, we will take, here is Exhibit 3-T. What was the regular starting time on the first Wednesday that is shown on Exhibit 3-T?

A. 6:49 is the time I started.

Q. You mean that is the time you punched the clock?

A. That is the time I punched the clock. . . .

Q. Now, what was the starting time that you say the foreman had told you for that day, if you can tell us?

A. I can't say.

Q. You can't say whether you were late or early, is that right?

A. That is right. I can't tell you. It is too long ago.

Q. Too long ago. And the next day, is that the same situation, the next day, on the same record?

A. 6:49.

Q. You don't know whether you were late or early that day either?

A. No.

Q. Now, as a matter of fact, the foreman never gave you any starting time for 6:49, did he, that you know of?

A. Oh, no.

Q. No. So that that 6:49 on those two days shown on that particular card doesn't indicate the time you started or the time the foreman told you to start, do they?

A. According to that, no.

Q. According to that, no. That is right. And on the following day, Friday, in the same week, on the same card, Exhibit 3-T, is that the same situation?

A. 6:48.

Q. Now, can you tell us from the best of your recollection what the starting time was on those days?

A. 6:45.

Q. 6:45. So on those days—

A. (Interrupting) Or 6:46.

Q. What?

A. 6:46.

Q. 6:46. So on those days you were late, a couple of minutes, getting through the clock, weren't you?

A. Well, I was later than I usually was.

Q. And, as a matter of fact, 6:46 was the time that the clock was open or the foreman let the people go through, whatever you might call it, isn't it?

A. Yes, that is right.

Q. And you got through a couple minutes after that, or 3 minutes that shows there?

A. Yes.

Q. Then you had to go over to your place of employment and all the rest of them did before you could start; that is right, isn't it?

A. That is right.

Q. And that same situation is true as to every day shown on Exhibit 3-T?

A. That is right.

Q. So that you don't know what time you started on those days, do you?

A. I know the time I punched in.

Q. But you don't know the time you started to working; that is right, isn't it?

A. Not exactly, no. • • •

Q. (By Mr. Nunneley) Witness, I will show you Exhibit 3-T, being your card for April 16, 1940, and on the first Friday that is shown on there what time did you go out, check out?

A. 4:41.

Q. And 5-T for Rita Schulte, what time is that?

A. 4:42.

Q. She checked out after you at that time, didn't she?

A. That is right.

Q. What would be the explanation that you would make of that?

A. I got through before she did.

Q. You got through before she did, and went on out, that is correct, isn't it?

A. That is right, I checked out.

Q. And on the second Friday on Exhibit 3-T, what time did you check out?

A. 5:09.

Q. And Rita Schulte?

A. 5:10.

Q. That shows that you again got through before she did anyway?

A. That is right.

Q. Taking both of these, Exhibit 3-T being your card, and Exhibit 5-T being Rita Schulte's card, will you look them over and see whether or not it is true that on every day on those cards you and Miss Schulte got through within a minute of the same time?

A. There is a couple of days there is two minutes' difference.

Q. Well, maybe I overlooked it. We will say every day you got through within two minutes of the same time, is that correct?

A. That is correct.

Q. On those two cards, and will you also look at Exhibit 3-T and look at your starting time of that day, of all the days that are mentioned on the exhibit there, both weeks, and tell us what your starting time was, if you can, on the days shown on that card?

A. 6:49, the time I punched in.

Q. I didn't ask you that; now, you know I asked you what the starting time was?

A. 6:46, supposed to punch in.

Q. Those days you were three minutes late?

A. That is right.

Q. Now, what time, let's put it this way, what time would you say you started to actually work back at your station on those days?

A. Around 6:51. . . .

The Master: I see. Did you ever get criticized by your foreman for coming in late?

A. No, I don't believe I have.

Q. (By Mr. Nunneley, continuing) You actually started provided the others were there ready to work, didn't you, at the time you just stated?

A. I can start any time I get in there if the others are there or not. If the belt is going I have to get them saggers there whether the girls are there or not.

Q. After you get the two saggers there, whether the girls are on the bench or not, then what happens? What if the girls are not there?

A. I throw them on the floor.

Q. You throw them on the floor?

A. That is right.

Q. You pile them up on the floor and have to pick them up, so that if none of the girls are there you want to tell us you keep on throwing the saggers on the floor?

A. That belt keeps on going. If the belt would stop, I have to stop.

Q. As a matter of fact, the belt is stopped if the girls aren't there, isn't that right?

A. No, not right away.

Q. How long would they let it run if the girls weren't there?

A. I would say two or three minutes.

Q. Two or three minutes. Within a couple of minutes. So that people have to be there to take it off, otherwise the whole thing is useless, whatever you would be doing; that is right, isn't it?

A. Oh, yes. You have to pull them off the floor and pick them all back up again.

Q. That is right. You said you had never been reprimanded or punished for being late, is that right?

A. I don't believe I have.

Q. The foreman was insistent that everybody be there on time, though, wasn't he?

A. You were supposed to be there on time.

Q. You were supposed to be there on time. You were supposed to be there so that practically all of you could start working at once; that was right, too, wasn't it?

A. That is right.

Q. By the way, do you recall that you testified yesterday that you always went in at 14 minutes to?

A. I believe I did.

Q. Do you want to change that in any way?

A. No. As a general rule we start at 14 minutes to.

Q. I will show you Exhibit 3-U. Is there more than one day out of those two weeks shown on there that you got in at 14 minutes to (handing exhibit to witness)?

A. There is one day punched on 7:01 here.

Q. That is the only one you were within the 14 minute class, anyway?

A. That is the only one I can see.

Q. (By Mr. Nunneley, continuing) Now, I show you Exhibit 3-U and ask you on the first Friday shown on Exhibit 3-U what time you checked out (handing exhibit to witness)?

A. 5:35.

Q. And I show you Exhibit 5-U and ask you on the first Friday shown there what time Rita Schulte checked out?

A. 4:54.

Q. 4:54. And on Exhibit 3-U on the second Friday what time did you check out?

A. 5:03.

Q. And Exhibit 5-U, what time did Rita Schulte check out?

A. 4:40.

Q. On each of those days you were credited with more time, too, in the hours computed on there than she was, weren't you? • • •

A. That is right.

Q. (By Mr. Nunneley) And, on all the other days shown on Exhibit 3-U and Exhibit 5-U, you and Rita Schulte got through and checked out within three or four minutes of each other, didn't you?

A. Yes.

Q. As a matter of fact, the only day that she has ever shown up in any of these cards to get out ahead of you very much is on Friday, is that right? • • •

A. That is right.

Q. And on each of the days shown on those two cards, Exhibit 3-U, and Exhibit 5-U, you went in after she did, is that right?

A. That is right.

Q. (By Mr. Nunneley) Now, you testified this morning that you had to be there before the girls did, in order for them to start to work, didn't you?

A. I believe I did.

Q. Yes. Now, in these days you, at least, weren't there before this girl was, were you?

A. No.

Q. And she couldn't have started to work until after you got there, could she?

A. It is possible she could have. There could have been empty saggers on her bench.

Q. If she happened to be in some other group?

A. That is right.

The Master: What days were you asking about? Was that restricted to Monday?

Mr. Nunneley: This was a whole week.

The Master: A whole week?

Mr. Nunneley: Two weeks, Exhibit 3-U as to Earl Trombley, and Exhibit 5-U as to Rita Schulte.

The Master: Every day Rita came there first.

Mr. Nunneley: Let me see now. I better check them. Yes, according to these, every day she came there first, isn't that correct (handing document to witness)?

A. That is correct.

Q. And on one day she came at 6:47 and you came at 7:01, is that right?

A. That is right.

Q. Was that a day when—when would you say the starting time was on that day, according to that card?

Q. (By Mr. Nunneley) What would you say the starting time was on the days shown on Exhibit 3-U being Earl Trombley's card, and Exhibit 5-U, being Rita Schulte's card, both for April 30, 1940?

A. I would say the starting time was 6:46, according to Rita's card. * * *

Q. (By Mr. Nunneley) And, isn't it true that according to those cards, both of you were late every day during the period? If that was really the time you were supposed to start to work?

Mr. Lamb: Not late, 6:46.

The Master: He said the starting time was 6:46.

Mr. Nunneley: They were late every day if the starting time was 6:46.

A. Yes, if you want to call it late.

Mr. Nunneley: Well, you aren't trying to figure us down to the last minute in paying you, are you?

Mr. Lamb: We certainly are.

Mr. Nunneley: All right, I just wanted to know.

The Witness: I just wanted to say we started at 7 o'clock.

Mr. Lamb: We certainly are. We would like to be paid according to the law—

Mr. Nunneley: (Interposing) I expected that answer from you.

Mr. Lamb: (Continuing) —if it isn't asking too much.

The Master: Just a minute. Let me ask you this question; you say the whole department is lined up in front of the time clock in the morning when you come in?

A. Yes, sir.

The Master: That includes men and women?

A. Men and women.

The Master: Pardon?

A. Men and women.

The Master: How long do you estimate it takes for all of them to punch in?

A. All of them?

The Master: Yes.

A. Roughly I would say two or three minutes.

The Master: If the foreman let the first one start in at 6:46, when would the last one be punched in?

A. I would say 6:48. • • •

Q. All right. Now, witness, on this card for the pay ending April 30, 1940, Exhibit 3-U, the first Tuesday on there, you got in, according to that, at 7:01, didn't you?

A. That is right.

Q. And you testified from the card a few minutes ago that the starting time during that period must have been 6:46, didn't you?

A. That is right.

Q. You worked all day that day, didn't you? You weren't sent home, were you?

A. No.

Q. And you weren't sent home on any of these other days that we have shown here so far that you were late, according to your theory?

A. I wasn't late.

Q. You weren't late; when you were there some time after 6:46, you weren't late?

A. Our time wouldn't start until 7 o'clock. You wasn't considered late until after 7:00.

Q. Your starting time was 7 o'clock; that is right, isn't it?

A. That is the time the pay started.

Q. That is the starting time. And you knew you weren't going to get paid until 7 o'clock, that was the time to begin work, isn't that right?

A. That is right.

Q. For which you got paid?

A. That is right. • • •

Q. (By Mr. Nunneley) I show you Exhibit 3-V, and Exhibit 5-V. You can look at the items on the cards. And I ask you if it isn't true that on all of those occasions excepting one, you went in after the woman employee, Rita Schulte, instead of before as you have testified?

A. (After examining exhibit) That is right.

Q. So that when you testified that you always went in first, and so on, ahead of the women, it shows by these cards that that was a mistake on your part, is that right?

A. There is no mistake. I was supposed to be ahead of the women. If I got a little before them—I am supposed to be there before they are.

Q. I say, if you are not you get in behind them, don't you?

A. That is right.

Q. And on the last several sets of cards we have shown you you have been behind them, haven't you?

A. Yes, according to them, yes.

Q. And it is also true that on both Fridays on Exhibit 3-V and Exhibit 5-V, being your card and Rita Schulte's card, respectively, you didn't come out until a considerable period after she did?

A. That is right, the last Friday of the pay.

Q. Can you explain how it is that the only day of the week, from these cards, that it appears that this woman got through ahead of you happens to be on Friday and it does happen on every Friday? • • •

A. During the week we all get out when the belt stops.

Q. That is right.
A. And if I am ahead of her, I am ahead of her.
Q. O. K.
A. On Friday night if she is done before I am done she goes out and punches, and I am done before she is I go out and punch.
Q. Yes.
A. There you are.
Q. But nobody quits until the belt stops, do they?
A. Friday night?
Q. How many minutes did you take to clean the belt, I mean so that it stops?
A. To clean the belt?
Q. After it stops, how many minutes is it before the ordinary work there is over and these girls leave?
A. 25 to a half-hour.
Q. That is your work of cleaning off that you are talking about?
A. Cleaning the belt after it is stopped.
Q. Before, when starting time comes, you say there are some saggers to be on the belt, how long does it take to get them off of there after stopping time, pardon me?
A. At night?
Q. At night.
A. 10 minutes.
Q. 10 minutes, you say it takes 10 minutes for that belt to make a circle?
A. That is right.
Q. That is right, ten minutes. But, you get out about a half-hour different every Friday night, don't you?
A. I wouldn't say every Friday night; there are some there I have been out half an hour before she is, not every Friday night. • • •
Q. (By Mr. Numneley) Did you or did you not clean up on the second Friday on here between where it shows you went out at 5:22 and Rita Schulte went out at 4:56?
A. I couldn't say that period or not.
Q. Did you or did you not clean up on the first Fri-

day, shown on these cards, Exhibit 3-V and Exhibit 5-V, wherein it shows you went out at 4:41 and Rita Schulte went out at 4:14?

A. I would say I didn't.

Q. You would say you didn't, and on the other one you say you don't know, is that right?

A. That is right.

The Master: That difference between 4:41 and 4:15, that is 26 minutes; what would be your explanation for that, if you were not cleaning up?

A. Well, I just had more saggers to put in, it took me longer to get them in.

The Court: Would it take as long as 26 minutes after the first girl left?

A. That depends what time she left and it depends on the saggers I have to get in and it depends on the girl that is filling them, how fast she gets rid of them.

The Master: You mentioned the figure of 10 minutes as being the time it took to get the saggers off the belt; this is 26 minutes; would it take that long too, or were you just giving an average figure?

A. I was giving a rough guess, it takes 10 minutes for the belt to make a loop.

The Master: Can it go as long as 26 minutes?

A. No, it wouldn't take the belt 26 minutes to go around; what I say 10 minutes for was for the belt to make one complete circle. See, it goes on a sort of circle, it comes out down here and it has to go all the way back. They are empty here (indicating) and they get filled up on this line and they go back full.

The Master: Could you be engaged there for 26 minutes after the girls had started leaving without doing any cleaning up work?

A. No, I don't believe it would take me that long to get them all out. • • •

Q. (By Mr. Nunneley, continuing) I will show you Exhibit 3-W and Exhibit 5-W, being cards for yourself and Rita Schulte respectively for the pay ending May 28,

1940, and ask you to examine the cards and ask you, first, if you will tell us from examining the cards what the starting time was in your department during that two-week period (handing exhibits to witness)?

A. 6:46.

Q. 6:46. Were you again late on each of the days on that card?

A. I was there after 6:46.

Q. After 6:46?

A. That is right.

Q. And, so, likewise, was Miss Schulte, is that right?

A. Yes, she was there, too.

Q. You were there after she was on all of those days, is that right?

A. That is right.

Q. And referring to the first Friday shown on Exhibit 3-W and the first Friday shown on Exhibit 5-W, just tell me, please, what time you checked out on that day?

A. 4:54.

Q. And what time Miss Schulte checked out?

A. 4:22.

Q. Now, how many minutes is that between that you got out after she did?

A. I don't know.

Q. You don't know?

A. No. Around 35 or 40 minutes.

Q. Well, let's see. 4:22—4:54, that is 32 minutes, isn't it?

A. Yes.

Q. 32 minutes. Now, what would be your explanation of what you were doing during that period?

A. I could have been cleaning up.

Q. Now, on the same Exhibit 3-W, what time did you go out the second Friday?

A. 4:51.

Q. And what time did Rita Schulte go out?

A. 4:35.

Q. And what is your explanation for that period?

A. I don't know.

Q. You don't know. Were you sent home on any of the days indicated on Exhibit 3-W because you were behind 6:46?

A. No.

Q. I show you Exhibit 3-X, being your card for the period ending June 11, 1940. The first Friday—what does that indicate, the marks that are on that on the first Friday (handing the exhibit to the witness)?

A. I couldn't say right offhand. It is too long ago.

Q. Does that indicate you worked somewhere else than in your own department?

A. That is what it seems like. It seems like a foreman's initials, or something.

Q. And there were some hours there, is that right?

A. Four, or something.

Q. And the next week, apparently, in there shows work on Saturday, so that would be the clean-up day, wouldn't it?

A. Yes.

Q. At what time did you get out on Saturday?

A. 4:59.

Q. And what time did Rita Schulte get out on Saturday?

A. 4:35.

Q. That is 24 minutes. What is your explanation of what you were doing during that time?

A. I don't know.

Q. You don't know?

A. It is too long ago.

Q. You don't know whether you were cleaning up, or not?

A. No, I don't. I couldn't say for sure.

Q. You might have been, is that right?

A. It is too long ago.

Q. Too long ago?

A. That is right.

Q. Also, on Exhibit 3-X and 5-X, it shows that on every

day but one you came in after Rita Schulte, doesn't it?

A. That is right.

Q. Were you mistaken this morning when you said that you always came in before the girls did?

A. It was supposed to be.

Q. I didn't ask you supposed to be. I don't care what you were supposed to do. I am trying to find out what you did. Were you mistaken when you said that you always came in before the girls did?

A. I was supposed to be in before the girls went in.

Q. Yes.

The Master: Did that include not only starting before them, but punching the time clock before them?

A. We were supposed to be in front of them in line. We would get in before they would.

Q. (By Mr. Nunneley) Didn't you testify this morning that you had to start before they did in order to get the saggers up there for them to load?

A. On Monday mornings, yes.

Q. Didn't you have to do that on other days?

A. The saggers were already there on other days.

Q. So that Monday morning business you are talking about is the matter of putting 16 saggers on there, each of which takes a few seconds, doesn't it?

A. Yes. And it also means putting 30 or 40 on the floor.

Q. All right, let's make it 30 or 40 of them. But it is a few seconds apiece, isn't that right?

A. About that.

Q. How many seconds would you say it takes you to handle one of these saggers, take it off the belt and put them on the floor, or on the bench, wherever you are going to put them?

A. How long would it take?

Q. Yes.

A. A few seconds.

Q. Well, how many? Could you say five seconds?

A. Two or three.

Q. Two or three seconds?

A. Maybe five.

Q. Maybe five, all right. So that the whole operation, of everything you even claimed to do, wouldn't be over a couple of minutes, would it, on Monday morning?

A. We don't stand there just picking them up and putting them down. You might wait a second or so before they came to you. They are a few feet apart.

Q. All right.

A. They are not steady lifting them up and down.

Q. How long would it take them to come by there? That is about as fast as you can pick them up, isn't it, that they are coming by on the belt?

A. Yes.

Q. When you get one over on the bench, there is another one waiting for you?

A. You have just got it backwards. We pull them off.

Q. You pull them off and put them on the side if they come too fast?

A. Any place.

Q. If they come too fast, faster than the girls can load them, you set them on the floor?

A. That is right.

Q. As a general rule they come about as fast as the girls load them, don't they?

A. Yes, that is right.

Q. They don't pile them on the floor and have them run around for fun?

A. No.

Q. So your Monday morning business, ahead of time business that you have been talking about here, consists of getting the 16 saggers onto the girls' benches?

A. And keeping the rest from going by, that is right.

Q. Keeping the rest from going by. Now, who is putting them on at the other end?

A. The unloaders. They unload them from the cars.

Q. They unload them from the other end?

A. That is right.

Q. Before they can get to you, they have got to start?
A. That is right.
Q. And you don't know what time they start?
A. I couldn't say.
Q. They aren't started when you get there, ordinarily, if you are on time, are they?
A. No.
Q. I show you Exhibit 3-Y. That is your card for the June 25, 1940, pay?
A. That is right.
Q. And according to that card there is one week there that you didn't work, isn't there?
A. That is right. My vacation week, I imagine. That was July.
Q. That was your vacation week. Did you get paid for that week?
A. I guess so.
Q. Well, did you get paid for that vacation week?
A. Yes, I guess I did.
Q. And the second Friday on that card, 3-Y, what time did you go out?
A. 4:10 I punched out.
Q. 4:10. And Miss Schulte went out at what time?
A. 4:07.
Q. 4:07. So on that occasion you only went out three minutes after she did, is that right?
A. That is right.
Q. What explanation is there on that one?
A. Well, we both got done at the same time, that is all; both at the same time.
Q. At the same time. I see. And again on those two cards, on the days that you worked, or on every day, you were in there behind her, were you not?
A. That is right.
Q. You didn't do any work during this first part of the July 25 pay, during that week, did you?
A. I don't believe so.

Q. You got your wages just the same?

A. That is right. ■ • •

February 16, 1942

Q. Mr. Trombley, I show you Exhibit 3-Z, that is your time clock card for July 9th, and on that card the work concluded for the calendar week on Saturday at that time, instead of that first one on there, instead of Friday, isn't that correct?

A. That is right. • • •

Q. (By Mr. Nunneley) Can you tell why it was you worked Saturday at that time?

A. No, I can't.

Q. Would that be because the Fourth of July would come in that week?

A. I imagine that is what it is for.

Q. And you checked out at what time on Saturday?

A. 4:36.

Q. And I show you Exhibit 5-Z, being the card of Rita Schulte for the same period, and what time did she check out?

A. 4:31. ■ ■ ■

Q. (By Mr. Nunneley) So that again on that occasion you stayed longer than she did, anyway, didn't you?

A. That is right.

Q. But you don't know what you did, is that right?

A. I was working.

Q. You were working longer. And also, checking the card for the next week on Friday, what time did you check out?

A. 4:58.

Q. And what time did Rita Schulte check out?

A. 4:36.

Q. 4:36, so at that time you were some 20 minutes after she was?

A. That is right.

Q. And your explanation for that is that you were working, is that right?

A. That is right.

Q. Of course, your time was counted for that twenty minutes, too, wasn't it?

A. Yes, according to the clock.

Q. Well, the other day you said you couldn't be engaged for 26 minutes after the girls left, without you were cleaning up; do you remember that?

A. Yes.

Q. (By Mr. Nunneley) Now, isn't it true that in this period you must have been cleaning up, isn't that the correct thing?

A. No, not exactly.

Q. Not exactly?

A. I could have been cleaning up my end, getting all the saggers in.

Q. You could have been cleaning up your end?

A. Getting all the saggers in.

Q. During that 22 minutes?

A. That is right.

Q. But you don't know for sure whether that is what you were doing or not, is that what you want us to understand?

A. No, I couldn't say for sure, it is too long ago.

Q. And you don't know whether you worked after that time that is on there or not, did you?

A. What do you mean, worked after that time?

Q. After the 4:58 that is punched, you don't know whether you did that day or not, do you?

A. I can't say for sure; no. It is too long ago.

Q. As a matter of fact, there isn't any day you can tell whether you worked after the time that is punched on the card, is there?

A. Not any one day I can't, but the general rule was to clean up after.

The Master: Did you ever make any notes, any records of any sort as to the time that you worked?

A. No, sir, I never kept any.

Q. (By Mr. Nunneley) You did have furnished to you every day, though, the hours that the company credited you with the day before, didn't you?

A. On the cards, yes.

Q. So that you knew what you were being credited with every day?

A. Yes.

Q. That you were being credited with having worked the day before. I show you Exhibit 3-AA, time clock card for July 23, 1940. . . .

And on the Friday that is shown on that card, what time did you check out?

A. 5:16.

Q. 5:16. I show you Exhibit 5-AA being the card of Rita Schulte. It doesn't show that she worked on the Friday that you worked, is that correct?

A. That is correct.

Q. I show you Exhibit 3-BB, being your time clock card for August 6, 1940.

A. That is correct.

Q. And the first Friday on there, what time did you check out?

A. 4:57.

Q. And I show you Exhibit 5-BB, time clock card of Rita Schulte for August 6, 1940. The first Friday on there, what time did she check out?

A. 4:34.

Q. Now, that appears to be a difference of 23 minutes, doesn't it?

A. That is right.

Q. And you would consider you were cleaning up during that period, too?

A. No, I wouldn't consider that.

Q. You wouldn't consider that?

A. No.

Q. If the young ladies were gone from the department, there wasn't anything else you could do, was there?

A. That one young lady might have been gone, but there is a lot more.

Q. You want us to check with the rest of them, is that right? Do you want to check with the rest of the young ladies, go through this with you on some more of them?

A. I can't say what time Rita got through; where she was working on her end, if she got all her work done, she went and punched out. We have got a lot of saggers there. We have got to get done before we go out.

Q. On Exhibit 3-BB, on the second Friday what time did you punch out?

A. 4:47.

Q. And Exhibit 5-BB, what time did that lady punch out?

A. 4:22.

Q. So there is 25 minutes there, too, isn't there?

A. That is right.

Q. Didn't you tell the Master the other day that as a matter of fact when there was 20 or 26 minutes in between that you must have been cleaning up, there wasn't anything else you could be doing, isn't that right?

A. Yes, I told him that.

Q. Do you still stand by it?

A. Well, I could have been cleaning up. I could have been working, too.

Q. If you were cleaning up, it was in your time, wasn't it?

A. On the card, yes, if I was.

Q. I will show you Exhibit 3-CC, time clock card, August 20, 1940. The first Friday on there, what time did you punch out?

A. 5:18.

Q. All right. And on the first Friday on Exhibit 5-CC, being the card of Rita Schulte, what time did she punch out?

A. 4:36.

Q. 4:36. So that there was over half an hour there, wasn't there?

A. That is right.

Q. And on that day you got credited with 9¼ hours, didn't you?

A. That is right.

Q. And Rita Schulte got credited with eight and a half, isn't that right?

A. That is right.

Q. Now, on Exhibit 3-CC, what time did you check out on the last Friday, if you can tell?

A. 5:42.

Q. 5:42. And what time did Miss Schulte check out on Exhibit 5-CC?

A. 5:09.

Q. 5:09. So again there was in the neighborhood of twenty minutes, is that right?

A. That is right.

Q. And the first time over a half hour?

A. That is right.

Q. Exhibit 3-CC, and 5-CC, examine them and see if it is not a fact that on every day of that two-weeks period, you went in the shop after she did, instead of before?

A. That is correct. . . .

Q. (By Mr. Nunneley) I show you Exhibit 3-DD. That was a Saturday, — where you worked on a Saturday, wasn't it (handing exhibit to witness)?

A. A half day.

Q. A half day. That would be the time when the clean-up would be, wouldn't it?

A. I imagine so.

Q. What time did you check out on Saturday?

A. 12:15.

Q. 12:15. And, I show you Exhibit 5-DD, and what time does it show Rita Schulte checked out (handing exhibit to witness)?

A. 12:39.

Q. 12:39. And, on the second Friday in that period, — on the Friday that is in that period, there is only one on

there—the second Friday in the period, what time did you check out?

A. 5:11.

Q. And what time did she?

A. 5:11.

Q. So, for once you both got through at the same time, didn't you?

A. That is right.

Q. Now, will you examine the cards, and see if it isn't true that on every day but one in that entire period on those cards, you went to work after she did?

A. That is right.

The Master: When did you usually come in with reference to the time the other men in the department came in? Were you usually one of the early birds, or would you sometimes be first, and sometimes last, or did you have any usual practice in that respect?

A. All the men punch in at the same time, see. You might have been first in line or you might have been last in line.

The Master: When you came there—you said you were supposed to be there fourteen minutes to seven, and on many of these cards you didn't get there until eleven minutes, or didn't check in until eleven minutes to seven. Would that mean that all the men were late on that day?

A. Well, no, it wouldn't. . . .

The Master: Were you frequently late, or did you usually come in at the time the others did?

A. Usually went with the rest of them.

The Master: All right.

Q. (By Mr. Nunneley) As a matter of fact, all the 85 people, or thereabouts, in your department, had to go through the one clock, didn't they?

A. Yes, they did.

Q. And get back there and go to work, and get ready to go to work; that is right, isn't it?

A. To go to work.

Q. And how many other departments had to go through that clock at that time, the same time you did?

A. At that one time, no other departments.

Q. No other departments. In other words, you want it understood now that no other departments were supposed to go through the clock at the same starting time, or about the same time that you were?

A. Before or after we did, but not the same.

Q. Before or after you did. In other words, the other departments beyond you—you went right through more or less in order of departments. What department went through ahead of yours?

A. I couldn't say. It was usually the dipping room.

Q. The dipping room went through ahead of your department?

A. Not all the time, but at times they did.

Q. And what department would go through behind?

A. I couldn't say. I think it was the chipping—chipping department.

Q. Chipping department. Now, it is a fact that practically all of these departments had to be working at about the same time, or the work would get cluttered up right away, isn't that true?

A. No, not right away.

Q. Within a few minutes it would, isn't that right?

A. I couldn't say just how long. • • •

Q. (By Mr. Nunneley) Now, witness, how many departments, do you know of, that had to start—you say 6:46—how many departments do you claim had to start at 6:46? • • •

A. I would say two is about all I know of.

Q. (By Mr. Nunneley) Two that you know of, and what was the other one besides your own?

A. The dippers.

Q. The dippers, and how many people would be in the dipping department?

A. I have no idea.

Q. You don't know. Did you ever have to line up at the clock?

A. Our department, yes.

Q. Your department, you would. Did you ever see other people lined up at the clock?

A. Before us?

Q. Before you?

A. If the dippers got in before us, they were lined up before us.

Q. There was only one time clock that the dippers and your group used during most of the period, isn't that

A. During most of the time, yes.

Q. There was one clock, so you couldn't all go in there at 6:46, could you?

right?

A. No, not all the departments.

Q. No. And, if your department went in at 6:46, if the dippers went in ahead of you, they had to go in before 6:46, didn't they?

A. I imagine so.

Q. And in which event they would be credited with the 15 minutes, wouldn't they?

A. I don't know.

Q. The way the time was figured, as you understood it?

A. I don't know nothing about the dipping room, how their time was figured, or what time they were supposed to be in, or what?

Q. All right, you don't know anything about them?

A. Not the dippers, no.

Q. But you did know how your time was figured?

A. I know how it was marked, yes; I know what the clock said.

Q. And you knew how it was figured to arrive at the hours that were placed on there, too, didn't you?

A. Yes.

Q. You knew in the morning they figured you to the

next quarter hour; if you went in at 6:46, they figured seven o'clock was starting?

A. That is right.

Q. And if you went out any time between four o'clock and 4:14, they figured four o'clock was quitting; you knew that, didn't you?

A. That is right.

Q. And the same principle applied at noon?

A. That is right.

Q. You knew that all the time you worked there?

A. That is right.

Q. When did you start working there?

A. '37, in the spring.

Q. In '37; in the spring of '37, and the same method was in vogue then, wasn't it, figure it just the same?

A. I imagine so.

Q. You were there, do you know or don't you?

A. Well, I couldn't say for sure, but I imagine it was. I don't believe I know of any changes made.

Q. You know of no changes made in the method of figuring.

A. Not after I started there.

Q. I show you Exhibit 3-EE. There is only one Friday on that on which you appear to have worked, is that right?

A. That is right.

Q. And I show you Exhibit 5-EE, and the second Friday on it is the same Friday that Rita Schulte was working?

A. That is right.

Q. On that second Friday on the card, Exhibit 3-EE, what time did you punch out?

A. 6:28.

Q. And Rita Schulte?

A. 6:11.

Q. On those two cards, will you examine them? Isn't it true that both at noon and morning you always went in after she did?

A. That is right.

Q. Exhibit 3-FF is your card for October 1, 1940, I guess.

Mr. Lamb: 1940?

Mr. Nunneley: Yes.

A. Yes, sir. It is hard to see it.

Q. The first Friday on there, what time did you check out?

A. 4:31.

Q. And I will show you Exhibit 5-FF, card of Rita Schulte, and what time did she check out?

A. 4:06.

Q. In other words, you stayed in that day more than a half-hour after she did, is that right?

A. That is right.

Q. And on the second Friday shown on those two cards, what time did you check out?

A. This is Rita Schulte's card. She punched out at 5:10.

Q. And you checked out when?

A. 5:22.

Q. 5:22. Will you examine the two cards and see if it isn't true that on most all the other days when you both worked, that excepting Fridays, you got through within a couple of minutes of the same time, both of you?

A. That is right.

Q. On these two, Exhibits 3-FF and 5-FF, examine them again and both at morning and noon that you went in after she did, didn't you?

A. That is right.

Q. On Exhibit 3-GG, by your time clock card for October 15, you checked out what time, on Friday, the first Friday?

A. 4:39.

Q. And Exhibit 5-GG, Rita Schulte, what time did she check out?

A. 4:19.

Q. 20 minutes difference between you again on that Friday?

A. Yes.

Q. And on the second Friday on Exhibit 3-GG?

A. 5:22.

Q. 5:22. And Exhibit 5-GG?

A. 5:03.

Q. 5:03. And examine the two exhibits and see that if on every other day in the week you didn't go out within three minutes of the same time that she did?

A. That is right.

Q. Exhibit 3-HH is your time clock card for October 29, 1940?

A. That is mine.

Q. And on the first Friday on there, what time did you punch out?

A. 4:50.

Q. I show you Exhibit 5-HH, time clock card of Rita Schulte for the same time. What time did she punch out?

A. 4:20.

Q. Now, look at the second Friday on Exhibit 3-HH.

A. 5:21.

Q. Exhibit 5-HH.

A. 5:01.

Q. On Exhibit 3-HH, note the first one at the top, being Wednesday, what time did you go in that day?

A. 7:15.

Q. And from there you had to go over to your place of work and get ready to go to work, didn't you?

A. That is right.

Q. Do you know whether you were given credit going from 7:15 that time, or not?

A. I imagine I was.

Q. In other words—

A. (Interrupting) That is right on the card.

Q. You were paid right from 7:15 that time, weren't you? . . .

The Master: October 29, 1940, is the card date. The very first day on the card there. Can you tell by the computation of work there as to whether you were given credit for beginning at 7:15?

A. No, I can't tell you, but I imagine I was. It is right on the quarter-hour. I imagine I got paid for that.

The Master: Well, you checked in at 7:15 and out at 12:03. That would be four and three-quarters hours to lunch, figuring to the quarter-hour; and in the afternoon you came in at 12:46 and left at 4:04. Figuring on the quarter-hour, that would be 3 hours that you would be given credit for, according to the system that he says they used there. So that would be three plus four and three-quarters is seven and three-quarters. Apparently, then, if you follow my computation, you were given credit for the morning beginning with 7:15?

A. Yes, sir.

The Master: And in the afternoon you were only given credit beginning at one because you came in at 12:46?

A. That is right.

Q. (By Mr. Nunneley, continuing) You weren't sent home that day, were you?

A. No. I might have been told to come in at that time.

Q. Well, I will show you Miss Schulte's card for the same day. She started—

A. (Interrupting) 6:47.

Q. 6:47. So that the department, at least, was supposed to start at the same time it had been right along?

A. That is right.

Q. You were late, then, is that right?

A. Not necessarily.

Q. Not necessarily. And another day there is a Friday on there 7:12 you came in, is that right?

A. That is right.

Q. And you weren't sent home that day either, were you?

A. No.

Q. Exhibit 3-II, the first Friday on there you didn't work in the afternoon? Is that correct (handing exhibit to witness)?

A. That is right.

Q. And what time did you check out on the second Friday?

A. 4:37.

Q. 4:37. I show you Exhibit 5-II; on the second Friday what time did Rita Schulte check out?

A. 4:11.

Q. There were 26 minutes again between those two?

A. That is right, yes.

The Master: On shifts that were supposed to start, according to your testimony, at 6:46, when you were supposed to come in at 6:46, if you came in at, say, three minutes to 7:00, what happened to you?

A. Nothing.

The Master: Did you punch the time clock immediately when you came in?

A. Oh, yes.

The Master: Was the time clock always open for punching whatever time you came in?

A. That is right.

The Master: You stated that it wasn't open until 6:46 on days that the shift started at that time, as I understand it.

A. The foreman was standing there.

The Master: The foreman was standing there, but you weren't allowed to punch in before 6:46?

A. That is right.

The Master: But, if you came in at three minutes to 7:00 you would go and punch in?

A. He wasn't there after that. Once they started going in, he was gone.

Q. (By Mr. Nunneley, continuing) You could punch in, as I understand it, any time after, we will say, 6:46 was when the foreman let you by the clock, you could punch in any time after that; is that right?

A. That is right.

Q. No matter what time you came. You could go through there and punch in?

A. That is right.

Q. Whether it was 47 or 48 or 49, or 7 o'clock, or what it was, you could go through there and punch in?

A. That is right.

Q. If you wanted to. You were prevented from punching in before 6:46; that is right, isn't it?

A. That is right.

Q. And the same was true, was it, at noon when you were going back from lunch, was that true then, too? Would you go back at whatever time you wanted to?

A. You had to go back in at a quarter to 1:00 or 46 to 1:00—or 12:46. The clock was open.

Q. The clock was open again at lunch time for you to go back at a certain time, is that right?

A. That is right.

Q. And that was at quarter to 1:00 or 14 minutes to 1:00?

A. I imagine so.

Q. What I am getting at is the same procedure took place at noon when you went back in as took place in the morning, is that correct?

A. That is right.

Q. And sometimes you punched in after, didn't you, some of these people?

A. That is right.

Q. On Exhibit 3-II, the second Friday, what time did you punch in at noon?

A. I didn't punch in.

Q. You didn't punch in?

A. Oh, the second, you say?

Q. The second Friday.

A. 1:03.

Q. 1:03. So that time you went in after the rest of them, didn't you; is that right?

A. No. We could have been told to be in at that time. Short of wire, or something.

Q. And what time did you punch out that day?

A. 4:06.

Q. And Rita Schulte punched out when?

A. 4:06.

Q. Out of all of these cards there are only two of them we have found thus far when you punched out at the same time that she did.

A. That is right.

Q. Within a minute or two?

A. That is right.

Q. All that we have been through, and on the second Friday shown on Exhibit 5-JJ, what time did you punch out?

A. 4:25.

Q. And Rita Schulte?

A. 4:06.

Q. Examine the card and see if it is true on all the other days on there you got out ahead of her.

A. That is right.

Q. Exhibit 3-KK is your card for December 10, 1940; what time did you check out on the first Friday shown on there?

A. 4:55.

Q. And Exhibit 5-KK, being the Rita Schulte card for the same period, what time did she check out?

A. She checked out at 4:36.

Q. 4:36. There was 19 minutes difference in your checking out time?

A. That is right.

Q. And on the second Friday shown on the card did you work?

A. No, sir, I didn't.

Q. You didn't work that day, and if you compare the cards, does it appear that on every other day excepting Friday Rita Schulte got out after you did?

A. That is right.

Q. Exhibit 3-LL, being your card for December 24, 1940, what time did you punch out on Friday?

A. 4:34.

Q. And Exhibit 5-LL, being the Rita Schulte card for the same period, what time did she punch out?

A. 4:10.

Q. 4:10; there was 24 minutes difference there, is that right?

A. That is right.

Q. And on the same card, Exhibit 3-LL, the second Friday, what time did you punch out?

A. 4:43.

Q. And Rita Schulte?

A. 4:24.

Q. 4:24. That is 19 minutes there. Excepting for Fridays, again, Miss Schulte got out after you did, didn't she, on every day?

A. That is correct.

Q. Exhibit 3-MM, being your card for December 31, 1940, that is your card, isn't it?

A. That is correct.

Q. There is only one week shown on there, isn't there?

A. That is right.

Q. I show you Exhibit 5-MM, card for December 31, 1940, for Rita Schulte; there is likewise only one week on there.

A. That is right.

Q. On the Saturday shown on Exhibit 3-MM, what time did you check out?

A. 4:51.

Q. 4:51, and I show you Exhibit 5-MM, the card of Rita Schulte; what time did she check out?

A. 4:28.

Q. So there was more than 20 minutes difference between you that day, wasn't there?

A. Yes.

Q. And on all the other days shown on the card, you got out before she did, didn't you?

A. Tuesday she got out before I did.

Q. Oh, yes, Tuesday she got out five minutes ahead of you?

A. That is right.

Q. And with that exception, the other days you got out before she did?

A. I believe that is right.

Q. (By Mr. Nunneley) I show you Exhibit 3, being card for January 14, 1941, Earl Trombley. Is that your card for that period, Mr. Trombley (handing exhibit to witness)?

A. That is right.

Q. And in that card, the first week shown thereon, the calendar week, the last work of that calendar week was done on Saturday?

A. That is correct.

Q. What time did you check out?

A. 4:14.

Q. And what time did Rita Schulte check out?

A. 3:54.

Q. And on the second calendar week, what day did you wind up working on?

A. I worked two hours Saturday.

Q. And, according to Exhibit 5-E, Miss Schulte didn't work that day, did she?

A. No, she didn't work on Saturday.

Q. And on Friday you checked out at what time, of that second Friday?

A. 4:01.

Q. And what time did Rita Schulte check out?

A. 3:39. • • •

Q. (By Mr. Nunneley) I show you Exhibit 3-C, being your time clock card for February 25, 1941, and ask you what time you checked out on the first Friday shown on there?

A. 4:32.

Q. And Exhibit 5-H, being the time clock card for Rita Schulte for the same period; what time did she check out?

A. 4:13. • • •

Q. Witness, other than the figures on the cards, can you tell anything about how many hours you worked in any given day, that you actually worked?

A. Outside of what is on there?

Q. That is right.

A. No, I couldn't. • • •

Q. (By Mr. Nunneley) You haven't made any computation as to any time, is that right?

A. That is right.

Q. And you don't know how much time you spent that isn't shown on the clocks, is that right?

A. No. • • •

Q. You don't know. All right: So that as far as any time that isn't shown on the clocks, you don't know how much time you spent; that is right, isn't it? • • •

A. No, I don't know.

Q. (By Mr. Nunneley) Do you claim that every week you were over the forty hours in 1940? From November of 1940 until the time this suit was started, do you claim that every week you were over forty hours?

A. No, I don't claim that.

Q. Do you know how many weeks there were that you were over forty hours, under any way of figuring?

A. No, I don't know, because I had days off. • • •

Q. As a matter of fact you started out, when you first worked there, you worked 44 hours, didn't you?

A. I think so.

Q. That was your normal way of working, according to the computations that were given, 44 hours was supposed to be the week, that is correct, isn't it?

A. Yes.

The Master: Let's get this clear, that is according to the company's computation, because that may make a difference; is that what you understand, witness?

A. That the working week was 44 hours.

Q. (By Mr. Nunneley) That was the working week, and later you understood that the working week was 42 hours, didn't you?

A. That is right.

Q. And later you understood it was 40 hours, didn't you?

A. That is right.

Q. And during each of those periods and all of those

periods you knew the way the company was computing your hours, didn't you?

Mr. Lamb: I object, it doesn't make any difference.

The Master: You knew the way the company was computing your hours?

Mr. Nunneley: Yes.

The Master: I will overrule the objection. . . .

Q. (By Mr. Nunneley) Did you ever object to the method of computing the time?

A. No.

Q. You are not working there any more?

A. No, sir.

Q. Did you get fired, or quit?

A. Quit.

Q. You quit. So that you were not discharged on account of that?

A. No.

Mr. Lamb: Did you go on strike?

Q. (By Mr. Nunneley) Did you go out on strike in April of 1940?

A. Yes, sir.

Q. And you went back in May of 1940?

A. Yes, that is right.

Mr. Cooper: 1941.

Mr. Nunneley: Yes, 1941, pardon me.

Q. (By Mr. Nunneley, continuing) The strike was in April, 1941; that is right, isn't it?

A. That is right.

Q. And you went back in May of 1941, and after you went back the method of computing the time was just the same as it was before, wasn't it?

A. There were a lot of changes made when we went back.

Q. I say, the method of computing the time was just the same as it was before, wasn't it?

A. I don't know what you mean there.

Q. Well, the way it was computed by the company to

figure your hours spent was exactly the same after that strike as it was before, isn't that correct?

A. Yes, that is correct.

Q. That is right. • • •

A. No, I couldn't say.

Q. (By Mr. Nunneley, continuing) Then, you knew all the while that the company was figuring that when you went in from 6:46 or any time thereafter up until 7:00 o'clock that the company figured that you started work at 7:00 o'clock, isn't that right?

A. No. We started to work as soon as we got in.

Q. I asked you what you knew how the company was figuring when you started work.

A. Yes, that is right.

Q. The company figured you started work at 7 o'clock; you knew that?

A. That is right.

Q. And that the same thing applied at noon when you went in. If you went in at 12:46 you knew the company figured you started work at 1 o'clock?

A. That is right.

Q. So that you knew when they figured you were starting to work all the while, didn't you?

A. That is correct.

Q. I show you Exhibit 3-F, time card for April 8, 1941, and will you tell us how many hours you worked the first day shown on the card?

A. Eight.

Q. And will you tell us how many hours you worked the second day shown on the card?

A. Three and one-fourth.

Q. And how many hours you worked the third day shown on the card?

A. Seven and three-fourths.

Q. And how many hours you worked on the fourth day shown on the card?

A. Five.

Q. And how many hours you worked on the fifth day shown on the card?

A. Eight.

Q. And on the sixth day?

A. Four and one-half.

Q. And on the seventh day?

A. Eight.

Q. And on the eighth day?

A. Eight.

Q. And on the ninth day?

A. Two and one-half.

Q. And on the tenth day?

A. Eight and one-fourth.

Q. I show you the card, Exhibit 3-G, the card for April 22, 1941. Will you tell us how many hours you worked on the first day shown on the card?

Mr. Lamb: Let's have the question—indicate that is the company's computation?

Mr. Nunneley: I asked him how many hours he worked.

The Master: "Shown on the card" might refer to the first day and might refer to the hours he worked. I can see how he might interpret it, and I interpreted it too, as showing the number of hours shown on the card. I realize there was an ambiguity at that time, and I was going to question you about it, but both of you seemed to understand about it.

Mr. Nunneley: I thought we understood it.

The Master: Both of you had a different idea, it is obvious.

Q. (By Mr. Nunneley) I will show you Exhibit 3-F, and ask you how many hours you worked the first day shown on the card? • • •

A. (Computing with paper and pencil) I don't know just how to figure this. (Figuring.) It didn't come out right.

The Master: Take your time.

A. (Figuring.)

I would say around nine hours. It might be a few minutes off either way. • • •

Q. (By Mr. Nunneley) Can you figure it any closer than that?

A. No. • • •

The Master: All the time you spent in the shop, in the plant, after passing the time clock, was 8 hours and 44 minutes? • • •

The Master: First ask him, do you know independently of the exhibits any week you worked more than forty hours?

A. I don't know just what he means by that.

The Master: Did you work at the plant more than forty hours any week that you know of?

Mr. Lamb: 1941?

The Master: Is that restricted to 1941?

Mr. Nunneley: Yes.

The Master: In 1941.

A. I couldn't say for sure, but I imagine I have. • • •

Q. (By Mr. Nunneley) Exhibit 3-F, the first day shown on the clock, which is evidently March 26th, the first day shown on the card, do you recall what you did after you punched in?

A. Yes, I went to work on the line after I punched in.

Q. (By Mr. Nunneley) Do you recall what day the other people got there, what time the people got there?

A. No.

Mr. Lamb: What day are you referring to, the 26th?

Mr. Nunneley: The same day and the same time.

A. I imagine the same time.

Q. (By Mr. Nunneley) Now, it is true, of course, that you couldn't start to work unless the group was there ready, isn't that right?

A. Quitting on production, no, I couldn't.

Q. You couldn't?

A. But I could still work without being on production.

Q. Without being on production. And you don't know,

do you, on that day, what time the rest of them were there, so you could actually start producing, anyway?

Mr. Lamb: I think he has answered.

A. No, I imagine they got in the same time.

Mr. Nunneley: I didn't ask you about your imagination.

A. I couldn't say.

The Master: Do you have any definite recollection?

A. No, I haven't.

Mr. Nunneley: You haven't any recollection about that.

The Master: Do you have any actual, definite recollection of what you did on March 26, 1941?

A. No, sir.

The Master: After you punched the clock?

A. No, sir.

The Master: Your answer was just based on your general practice, in other words?

A. Yes, sir.

Q. (By Mr. Nunneley) And on the same Exhibit 3-F, you went out at 11:41, according to that, is that right?

A. That is correct.

Q. And you don't know just what time you quit production, do you?

A. Not exactly, no. But according to the regular time, it was about a minute and a half.

Q. But I say that day you don't know what time you quit production, do you, exactly?

A. I can't remember.

Q. And on the same card, it shows, Exhibit 3-F, that you went in at 12:34?

A. That is correct.

Q. You don't know what time the rest of them got there, do you?

A. About the same time I did.

Q. About the same time you did. And you don't know what time you started in production after that entry, either, do you?

A. I am not positive about it.

Q. And you went out, according to the card, on the same day, at 4:25?

A. That is correct.

Q. And you can't tell exactly what time you left production, then, either, can you?

A. At that time; about a minute from that.

Q. About a minute from that. On the next day you went in at 12:34, is that right? In the afternoon; you didn't work in the morning?

A. Up here (indicating)?

Q. Yes.

A. Yes, 12:34.

Mr. Lamb: That is the second time he had checked in, isn't it?

Mr. Nunneley: Apparently. He didn't work after the first time.

Mr. Lamb: He reported in the morning at 7:10.

The Master: He said he was sent home in the morning.

Mr. Lamb: Did you ask him whether he got paid?

Q. (By Mr. Nunneley) That would indicate you reported late, doesn't it? 7:10.

A. Not necessarily.

The Master: Do you know why you were sent home on that day?

A. No, I couldn't say. That doesn't mean that I was late.

Q. (By Mr. Nunneley) That doesn't mean you were late?

A. No.

The Master: For what other reason were you sent home when you reported in the morning?

A. Well, there is times when you got too much time in, they sent you home.

Q. (By Mr. Nunneley) They sent you home sometimes when you got too much time in. What do you mean by that?

A. If they figured you was going to get overtime, over 40 hours, you would get a day off.

Q. In other words, you understood the policy of the

company in the plant, was to see that you didn't work over 40 hours, didn't you? . . .

A. Well, I would say their policy was to see that you got as less hours as you could. . . .

The Master: I think I will rule the cross-examination ended.

Mr. Nunneley: May we have an objection on the record to the ruling?

The Master: Yes.

*Re-Direct Examination*

By Mr. Lamb:

Q. May I ask the witness whether or not duplicate copies of the time cards were given to you or other employees?

A. No, sir.

Q. And I ask the witness whether the company, Mt. Clemens Pottery Company, made restitution in the early part of 1939 of some overtime pay to you; do you have any recollection of that?

A. No, sir.

Q. May I ask the witness whether or not there was a line-up in front of the time clocks when you took your place in line and punched the clock when you got to the clock?

Mr. Cooper: Just a minute, an objection to the question on the ground it doesn't specify a time.

Q. (By Mr. Lamb) May I ask whether or not, whether it was his practice to line up at the clock?

The Master: In the morning or afternoon or any time?

Q. (By Mr. Lamb) In the mornings. Upon your appearance, if there was a line there, did you line up and take your place to punch the clock?

A. Yes, sir.

Q. When you arrived at it?

A. That is right.

The Master: What is that? Was that true during the entire period from the time you began work until the time you quit?

Mr. Lamb: That you took your place in line?

A. That is right.

Q. (By Mr. Lamb) And in the afternoon, in reporting in, is that true that you took your place, if there were others in line, you took your place in line?

A. That is correct.

Q. And in checking out at noon, did you take your place in line, if there was a line?

A. Yes, sir.

Q. And in checking out at night, did you take your place in the line, if there was a line at the time clock?

A. I did.

The Master: Are you asking him if he took his place if there was a line?

Mr. Lamb: That is right; if there was a line.

The Master: I suppose if there was he would have to line up.

Mr. Lamb: The point is at times he reported in at 6:47 and there were eight or ten people in line; it would take him a minute to get to the time clock; he was ready to punch in at 6:46, but maybe it would take the line a minute or two to move up until he could punch the clock.

The Master: Was there usually a line in the morning that you had to go through before you could punch?

A. In the morning, yes, there was.

The Master: Was there when you quit at noon, went out?

A. It all depends if I was the first one out or if I was behind in our department. At times there was a small line-up there.

The Master: How about the afternoon when you came back?

A. Coming back there was a line-up again.

The Master: When you went out at night?

A. If I was the first one there, I was the first to

punch out; if there was some ahead of me I had to wait until my turn in the line.

The Master: In other words, was there usually a line or usually just one individual punching out?

A. There was usually a line.

Q. (By Mr. Lamb) I am not sure whether your evidence is clear as to whether the girls ever came back in your department to clean up on Friday?

A. Oh, yes, they did come back to clean up.

Q. Did you tell us the date when you ceased working at The Mt. Clemens Pottery Company?

A. The day I quit?

Q. Yes.

A. The 1st of June, I imagine, around the 1st.

Q. About June 1, 1941?

A. That is, around the 1st of June. • • •

*Re-Cross Examination*

By Mr. Nunneley:

Q. During this period that you worked there—let's see, when did you start?

A. In the spring of 1937.

Q. During that period did you receive any money for which you did not work?

Mr. Lamb: Objection. That certainly was not brought out in my redirect by a long shot; and, secondly, we have gone into the question of the method by which this plaintiff claims to have compensation owing him. • • •

The Master: My ruling is that the cross-examination is terminated, but they can ask to have it re-opened if they have good grounds.

February 17, 1942

STEVE ANDERSON was thereupon recalled as a witness herein, and having been previously duly sworn, testified further as follows:

*Direct Examination* (Continued)

By Mr. Lamb:

Q. Mr. Anderson, when testifying before, you advised us of the employment dates, that is, when you began work for The Mt. Clemens Pottery Company.

A. Yes.

Q. (By Mr. Lamb) Will you advise us when? What year, approximately, did you start working for The Mt. Clemens Pottery Company?

A. Approximately ten years ago.

Q. Will you tell us the date up to which you worked?

A. It was the Saturday before the strike. I can't remember dates.

Q. That was back in 1941?

A. 1941, yes.

Q. In the fall of 1941?

A. Yes.

Q. Can you tell us, Mr. Anderson, whether you ever made objection to the practice of the company, over compelling its employees to work for time for which they were not paid?

A. Yes, I had two or three arguments with my foreman about that.

Q. Who was your foreman?

A. Ernest Harms.

Q. Will you give us the content of your conversation with Mr. Harms?

Mr. Nunneley: I object to that unless the time and place is fixed.

The Master: Will you have the time and place fixed first?

Q. (By Mr. Lamb) Fix the time and place, if you can.

A. I couldn't name the dates.

The Master: Fix the time of the conversation to the best of your recollection. Can you fix it with reference to the strike in April of last year?

A. Yes, it was before that. It must have been about six months before the strike.

The Master: About six months before the strike. Where did this conversation take place?

A. On the job; in the dipping house.

The Master: He said it was about six months before the strike, to the best of his recollection, and it took place in the dipping house on the job.

Q. (By Mr. Lamb) Which strike?

A. The first walk-out.

Q. That was 1940?

A. Yes, in April.

Q. You say that took place in the—

A. (Interposing) Dipping house.

Q. Dipping house. Now, will you give us the words or substance of the conversation?

A. I came in what he said was late a few mornings, I guess it wasn't 14 minutes to, and he jumped all over me about it, and I said to him, "What the hell," I said, "We don't get paid until 7 o'clock anyhow." "Well," he says, "if you don't like the way we are running things around here we have men standing outside the door that will work for 50 cents an hour, all we want." So, I kept my mouth shut.

Q. Did you have any further discussions with Mr. Harms, or any other foreman, relative to objecting to the method of compelling the employees to work without compensation?

A. No, I don't believe I did.
Q. Now, who is Mr. Harms; will you tell us who he is?
A. He is foreman of the dipping.
Q. He is the foreman of the dipping department?
A. Yes.
Mr. Lamb: That is all of the direct examination at this time.

*Cross Examination*

By Mr. Cooper:

Q. Mr. Anderson, I believe you said that you worked in the dipping department?
A. Yes, sir.
Q. About how many people are employed in the dipping department, Mr. Anderson?
A. I imagine around about 75, I imagine.
Q. Could you tell the Master the nature of the operation that you performed?
A. Dipping is the process of dipping the ware in the glaze, it is a liquid glass.
Q. You hold the product in your hand?
A. Yes, and dip it in there, and on flat work you have to shake it, and the cups, you grab a piece of ware and put it in one hand and throw it up on a machine; it is a conveyor belt.
Q. Do you mix this preparation into which you dip the ware?
A. No, that is mixed in a different department.
Q. And it comes to you every morning, does it?
A. Yes.
Q. Then what happens to a piece of ware after you have dipped it into the mixture and put it up on the machine?
A. Well, they have girls there sponging, and other girls taking it off.
Q. That is—
A. (Interposing) That is on cups.

Q. A girl, in regard to cups, a girl follows your operation by taking the cup after you have dipped it in the glaze and set it up on the machine, is that right?

A. Yes, and on flat ware it goes through a different process. They have what they call mangles, the ware is set in these mangles; that went through the mangle and then had girls on the back end taking it off, and then on the colored ware they had big wheels to set the ware on.

Q. Let me ask about flat ware. After you had dipped the piece of flat ware into the glaze, you would set it on another machine, is that right?

A. Yes.

Q. And that machine is called a mangle?

A. No—flat ware, yes, set it on the mangle.

Q. And then the girl would take it off the mangle and perform another operation, is that right?

A. Just take it off, yes, and pile it on the boards.

Q. About how many pieces will the machine carry, the machine that you put the cups on?

A. Just what do you mean, how many will it carry?

Q. How many cups can you put on it at once before the girls begin to take them off?

A. Oh, I imagine six or seven dozen.

Q. How long does it take to dip the cups in the glaze and pick them up again?

A. Oh, about 200 dozen an hour pieces.

Q. And the machine holds how many, did you say?

A. Oh, about four or five dozen maybe. I couldn't say for sure. It is according to how fast you run the machine.

Q. You think it holds at least four dozen?

A. Yes.

Q. About how long would it take you, then, to dip four dozen cups?

A. I never figured it out. It wouldn't take very long.

Q. Just a matter of a minute or so?

A. Yes, it might be.

Q. Then, I presume you wouldn't be dipping more than a minute or so in the morning unless there were girls there ready to take it out, is that right?

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A. No. We came in in the morning, and took the water—

Q. (Interposing) I don't want to interrupt you, Mr. Anderson, but I just wanted to get at that question. After you started dipping you could dip three or four dozen cups in a matter of a minute or so, is that right?

A. Probably, yes.

Q. And you would place them all on this particular machine after you would dip them?

A. This machine was a conveyor.

Q. And then there would be girls there to take them off the machine and perform another operation?

A. Right.

Q. If it happened on a particular morning that the girl wasn't there, I don't presume you would be able to dip more than a minute or so?

A. No. The foreman is always there to tell us to go over and wash ware, which wasn't our fault that the ware had to be washed.

Q. In other words, it was impossible for you to carry on the dipping operation itself for more than a minute or so unless girls were there to carry on with the succeeding operation, isn't that right?

A. Yes, it would be.

Q. And if you were dipping flat ware instead of the cups, the same thing would be true, would it not?

A. No. This mangle would hold, — oh, that mangle around—well, one mangle would—one mangle it took 21 minutes to go around, I guess, and on the clean mangle it would take them a half-hour to go around, to make the half-turn. They put the ware on the front end of the mangle and it would be a half-hour before it got to the back end before the girls took it off.

Q. Would the mangle be completely clean the night before?

A. Sometimes, and sometimes it wouldn't.

Q. In other words, it might be when you started in the morning, if you started dipping flat ware, there would be

a number of pieces on the mangle left over from the previous day?

A. Yes.

Q. And, then, would it not be true that unless there were girls there to take the flat ware off the mangle and do the next operation you could continue dipping flat ware only until such time as the mangle was filled up?

A. That is right.

Q. As a matter of fact, it was generally left filled at night, was it not, the mangle?

A. Well, sometimes it was, yes.

Q. That was the general rule, was it not?

A. No, not always.

Q. But, I say, usually.

A. It is according to how much ware they had out for the belt.

Q. Well, it would only be on very rare occasions that the mangle would be left empty at night, isn't that right?

A. No, that wasn't very rare occasions, because we were behind on ware quite a bit of the time.

Q. (By Mr. Cooper) Would you say—

A. (Interrupting) That is, you know, to load the belt, the glost belt.

Q. Would you say it happened as frequently as once a week when you finished work in an afternoon the mangle would be all cleaned up?

A. Oh, it happened quite a bit more than that.

Q. Would you say it happened every day almost?

A. No, I wouldn't say every day.

Q. Well, how often would it happen?

A. About half of the time.

Q. About half of the time the mangle was entirely clear when you quit work in the afternoon?

A. That is right.

Q. You are quite sure of that?

A. Yes.

Q. I think you said your residence is in Mt. Clemens?

A. Yes.

Q. Is it pretty close to the pottery, Mr. Anderson?

A. Oh, it is about a mile and a half, I imagine.

Q. Do you walk over to work in the morning?

A. No, I used to drive.

Q. Do you drive your own car?

A. Yes.

Q. Do some of the other pottery workers go with you sometimes?

A. No.

Q. You always drove by yourself?

A. Well, once in a while I would ride with some of the other fellows if my wife wanted to take the car or something.

Q. On those occasions you might ride with somebody who worked in a different department?

A. Yes, that is right.

Q. If it happened that you were riding with someone who worked in a department that started earlier than yours, I suppose you would plan to get there in time so that other person can get to wor'.?

A. Oh, yes. The guy I rode with used to get there around, oh, a quarter after 6:00. He liked to sit around and shoot the bull in the dressing room.

Q. Some of the workers did that, didn't they,— get there early to be sure they wouldn't be late, and sit around and talk after they got there?

A. Yes.

Q. I think the time clocks have been referred to on the record as the north and south time clock. Which time clock did you punch, Mr. Anderson?

A. I think it was the south one.

Q. Then after punching that south time clock you would walk over to the dipping department?

A. Yes, sir.

Q. Showing you Exhibit 1-LL to identify it, being marked as your time card for the pay ending April 8, 1941, and directing your attention to the entry for the second day appearing on that time clock card, would you say

that you punched in the south time clock at 6:49 that morning?

A. I imagine I did.

Q. And you proceeded from there to the dipping department?

A. Yes.

Q. Now, after you punched in the time clock, Mr. Anderson, did you walk along a little aisle to a doorway between the storage room and the time clocks?

A. Yes.

Q. How wide is that doorway?

A. Oh, I imagine it is about half again as wide as that one. About five and a half feet, I imagine.

Q. You guess it is about five and a half feet wide. Then as you turn through that door, that would take you through an aisle between the storage compartment and the place where the time clock was?

A. Yes, that would take us through a little hall, like.

Q. Would you go beyond the kiln, then, or would you walk up another aisle between the kiln and the storage room?

A. We would walk up that aisle between the kiln and the storage room.

Q. How far was it along that aisle about, do you know?

A. Oh, I imagine it was around 120 feet.

Q. 120 feet. About how wide was that aisle?

A. Oh, about eight feet, I imagine.

Q. You think it was eight feet. Do you think there was room for more than one person to walk in the aisle at a time?

A. Oh, yes.

Q. I mean, you feel two people could walk abreast down that aisle?

A. Yes.

Q. More than two.

A. No, I never seen more than two.

Q. As a matter of fact people walked down there in single file, did they not, Mr. Anderson?